California State Assembly

NATURAL RESOURCES

LUZ RIVAS
CHAIR

AGENDA

Monday, March 27, 2023
2:30 p.m. -- State Capitol, Room 447

BILLS HEARD IN SIGN-IN ORDER

** = Bills Proposed for Consent

1.	AB 43	Holden	Greenhouse gas emissions: building materials: embodied carbon trading system.
2.	**AB 297	Vince Fong	Wildfires: local assistance grant program: advance payments.
3.	AB 340	Vince Fong	California Environmental Quality Act: grounds for noncompliance.
4.	AB 388	Connolly	Wildfire and Forest Resilience Action Plan: implementation strategies: roadmap.
5.	AB 692	Jim Patterson	California Environmental Quality Act: exemption: egress route projects: fire safety.
6.	AB 704	Jim Patterson	Energy: building standards: photovoltaic requirements.
7.	**AB 706	Luz Rivas	Leasing of public lands: minerals other than oil and gas.
8.	**AB 788	Petrie-Norris	Fire prevention: grant programs: reporting.
9.	AB 849	Garcia	Community emissions reduction programs.
10.	AB 863	Aguiar-Curry	Carpet recycling: carpet stewardship organizations: fines: succession: procedure.
11.	AB 882	Davies	Coastal resources: Climate Ready Program: State Coastal Conservancy.
12.	AB 909	Hoover	Solid Waste Disposal and Codisposal Site Cleanup Program.
13.	**AB 998	Connolly	Biomass energy facilities: State Energy Resources Conservation and Development Commission: report.
14.	AB 1167	Wendy Carrillo	Oil and gas: acquisition: bonding requirements.
15.	**AB 1172	Calderon	Nuclear fusion.
16.	AB 1195	Calderon	Climate Change Preparedness, Resiliency, and Jobs for Communities Program: climate-beneficial projects: grant funding.
17.	**AB 1279	Mike Fong	California Conservation Corps: contracts: community conservation corps.
18.	AB 1347	Ting	Solid waste: paper waste: proofs of purchase.

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 43 (Holden) – As Amended March 2, 2023

SUBJECT: Greenhouse gas emissions: building materials: embodied carbon trading system

SUMMARY: Requires the Air Resources Board (ARB) to develop a market-based embodied carbon trading system (trading system) to facilitate compliance with the state's strategy to reduce the carbon intensity of building materials by 40% by 2035.

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 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, under the Buy Clean California Act (BCCA) the Department of General Services (DGS), in consultation with ARB, to establish and publish the maximum acceptable Global Warming Potential (GWP) limit for four eligible materials: structural steel, concrete reinforcing steel, flat glass, and mineral wool board insulation. Further states that when used in public works projects, these eligible materials must have a GWP that does not exceed the limit set by DGS. (Public Contract Code § 3500-3505)

3) Requires ARB to develop by July 1, 2025, a framework for measuring and reducing the carbon intensity of new building construction. (HSC § 38561.3)

4) Requires the framework to include a comprehensive strategy to achieve a 40% net reduction in the carbon intensity of construction and materials used in new construction as soon as possible, but no later than December 31, 2035. Establishes an interim target of reducing the carbon intensity of construction materials 20% by December 31, 2030, and requires ARB to assess the feasibility and cost impact of meeting the 2030 interim goal. (HSC § 38561.3)

5) Authorizes ARB to include a tracking and reporting mechanism in the framework and charge a fee that may only cover ARB's costs to administer the reporting mechanism. (HSC § 38561.3)

6) Requires ARB to develop, by July 1, 2023, a comprehensive strategy for the state's cement sector to achieve net-zero GHG emissions no later than December 31, 2045. (HSC § 38561.2)

THIS BILL:

1) Defines terms used in the bill, including:

a) "Carbon intensity" as the quantity of life-cycle GHG emissions per unit of building material, and specifically the ratio between the net upstream carbon dioxide impact of a material and the weight of the material;

b) "Embodied carbon trading system" as a market-based credit trading platform of GHG emissions exchanges, banking, credits, and other transactions, governed by rules and protocols established by ARB that result in the same GHG emissions reduction, over the same time period, as direct compliance with a GHG emissions limit or emission reduction measure adopted by the ARB;

c) "Full material life-cycle" as the aggregate of GHG emissions of a building material, including direct emissions and significant indirect emissions, as specified, including those that arise from extracting, producing, transporting, manufacturing, as well as operational and end-of-life emissions; and,

d) "Low carbon product standard" as a framework created to reduce the carbon intensity of building materials by 40% to facilitate a credit trading platform for building materials along with other requirements, as specified.

2) Requires ARB to establish the trading system in compliance with the requirements of the framework and this bill that meets both of the following:

a) The system applies to building materials providers, developers, architectural and engineering firms, and construction companies; and,

b) The trading system unit of measurement is the GWP per gross square foot.

3) Grants ARB the flexibility to design the trading system, and requires ARB to:

a) Adopt rules and regulations for the credit allocation method, including those governing any tradable compliance instrument, make efforts to avoid an overabundance of compliance credits in the market, including the authority to set an upper limit on the amount of credits, as specified.

b) Consider using the credits generated through the trading system to help promote innovation and investment in building construction materials.

c) Consider all relevant information pertaining to low-carbon building materials reduction programs in other states, localities, and nations, and review existing and proposed international, federal, and state GHG emission reporting programs, make reasonable efforts to promote consistency among the programs, and streamline reporting requirements.

d) Consult with the California Building Standards Commission, the Department of Housing and Community Development, and the State Energy Resources Conservation and Development Commission in the development of building regulations in order to minimize duplicate or inconsistent regulatory requirements.

e) Integrate the trading system with the framework by December 31, 2026, and fully implement the trading system by January 1, 2029.

4) Grants ARB the discretion to adopt further GHG emission reduction targets within the scope of HSC 38561.3 prior to December 31, 2025, or to alter the interim 2030 target, as appropriate, or provide early reduction credit considering market adoption, if appropriate.

5) Requires, when developing the plan, ARB to identify opportunities for emission reduction measures from all verifiable and enforceable voluntary actions and best management practices.

6) Requires ARB to adopt rules and regulations to monitor, verify, and enforce voluntary GHG emission reductions from building materials that are authorized by ARB to comply with limits established by ARB pursuant to HSC 38561.3.

7) Requires ARB to adopt rules and regulations through an open public process to achieve the maximum technologically feasible and cost-effective GHG emission reductions from construction building materials.

8) Requires ARB to consider the cost-effectiveness of the rules and regulations, but shall not limit consideration to monetary costs and benefits. Requires ARB to also consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.

9) Authorizes ARB to consider the use of third-parties, such as verifiers, for purposes of implementing the bill.

10) Specifies that a violation of a rule, regulation, order, emission limitation, emissions reduction measure, or other measure adopted pursuant to the bill shall be deemed to result in the emission of an air contaminant for enforcement purposes.

11) Requires ARB to periodically review and update its emission reporting requirements as necessary.

12) Specifies that the bill does not authorize the creation of a revenue-generating program or any other program that would result in moneys being paid to the state, other than relevant penalties.

13) Specifies that no reimbursement is required pursuant to the bill, pursuant to the California Constitution.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

> As you all are aware, in 2018, Governor Jerry Brown issued Executive Order B-55-18, which ordered a statewide goal to achieve carbon neutrality as soon as possible.
>
> In response to the executive order, last year, I authored AB 2446, which now requires CARB to develop a framework to include a comprehensive strategy to achieve a 40 percent net reduction in the carbon intensity of construction and materials used in new construction as soon as possible, but no later than December 31, 2035.

To ensure that the industry is able to comply with this new law, AB 43 would require the state board to establish an embodied carbon trading system, as defined, and would make it applicable to building materials providers, developers, architectural and engineering firms, and construction companies.

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

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

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

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

4) **Buy Clean California Act**. The BCCA establishes limits on embodied carbon emissions and construction materials procured by the state for public construction projects. By January 1, 2022, the law requires DGS to publish acceptable maximum GWP limits for structural steel, concrete reinforcing steel (rebar), flat glass, and mineral wool board insulation. In order to determine and compare the GWPs of different products and materials, DGS relies on environmental product declarations (EPDs).

5) **Environmental product declarations and life cycle assessments**. An EPD is a widely-accepted, verified report of the ways in which product affects the environment throughout its life cycle. It provides information about a product's impact upon the environment, such as GWP, air emissions, ozone depletion, and water pollution. EPDs allow purchasers to have

comparable, objective, and third-party verified data to better understand a product's environmental impacts so they can make more informed product selections.

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

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

7) **This bill**. This bill requires ARB to develop a trading system, to be incorporated into the framework, to facilitate compliance with the 40% GHG emissions reduction requirement for the in the building sector. The author points out that California is facing a housing shortage, and while it is imperative that the state meet its housing goals, those goals should not come at the expense of California's climate goals. This bill is intended to facilitate the achievement of those goals without increasing the costs for homeowners.

8) **Suggested amendment**. This bill allows the use of credits for innovation and investment for building materials, but it does not specify that it needs to be innovation and investment in building materials that lower GHG emissions. The *committee may wish to amend the bill* to clarify that the use of credits for innovation and investment must be for building materials that reduce GHG emissions.

REGISTERED SUPPORT / OPPOSITION:

Support

AJW, INC.
BamCore, LLC

Opposition

None on file

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 297 (Vince Fong) – As Introduced January 26, 2023

SUBJECT: Wildfires: local assistance grant program: advance payments.

SUMMARY: Extends the sunset date from January 1, 2024, to January 1, 2034, for the director of Department of Forestry and Fire Protection (CAL FIRE) to authorize advance payments from a local assistance grant for fire prevention and home hardening education activities.

EXISTING LAW:

1) Requires CAL FIRE to establish a local assistance grant program for fire prevention and home hardening education activities. (Public Resources Code (PRC) § 4124.5 (a))

2) Authorizes the director of CAL FIRE, until January 1, 2024, to authorize advance payments from a grant program award, not to exceed 25% of the total grant award, except as specified. (PRC § 4124.5 (e)(1))

3) Require the State Fire Marshal to classify lands within state responsibility areas into fire hazard severity zones based on fuel loading, slope, fire weather, and other relevant factors present, including areas where winds have been identified by the CAL FIRE as a major cause of wildfire spread. (PRC § 4201)

4) Define "fire prevention activities" as those lawful activities that reduce the risk of wildfire in California, including, but not limited to, mechanical vegetation management, grazing, prescribed burns, creation of defensible space, and retrofitting of structures to increase fire resistance. (PRC § 4124)

5) Requires CAL FIRE to provide a report to the Legislature on or before January 1, 2023, on the outcome of CAL FIRE's use of advance payments for forest health local assistance grants. (PRC § 4799.05 (a)(2)(C))

6) Authorizes a state agency that administers a grant program to advance a payment to a recipient entity and requires the state agency to prioritize recipients and projects serving disadvantaged, low-income, and under-resourced communities or organizations with modest reserves and potential cashflow problems, and ensure the advance payment to the recipient entity does not to exceed 25% of the total grant amount awarded to that recipient entity. (Gov Code § 11019.1)

FISCAL EFFECT: Unknown.

COMMENTS:

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

> Wildfire seasons are unpredictable, and the severity of the fires are ever-increasing. The 2020 wildfire season was the most destructive in California history. CAL FIRE estimated 4.3 million acres burned across 8,648 incidents,

destroying 11,116 structures and resulting in the deaths of 33 people. The cost to residents in the state is tremendous and tragic. Shovel-ready projects across the state are ready to break ground to keep vulnerable communities safe, and advanced payments from CAL FIRE will provide needed flexibility to local agencies and organizations to implement critical wildfire prevention projects. AB 297 bridges the wildfire prevention goals of the state with the readiness of locals to harden their communities.

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

3) **Local assistance grants**. As established pursuant to AB 1956 (Limón, Chapter 632, Statutes of 2018), CAL FIRE administers Wildfire Prevention grants to fund robust year-round fire prevention efforts in and near fire threatened communities in high and very high fire hazard severity zones that focuses on increasing the protection of people, structures, and communities. The grants enable local organizations, like fire safe councils, to implement activities that address the hazards of wildfire and reduce wildfire risk to communities. Funded activities include hazardous fuel reduction, wildfire prevention planning, and wildfire prevention education.

   Last year, the San Gabriel Valley Council of Governments received grant funding to work towards developing a Regional Wildfire Protection Plan that will help to protect 31 cities and communities, 22 of which are identified as "communities at risk."

   In Lake County, the Robinson Rancheria Band of Pomo Indians received a grant for a hazardous fuels reduction project in the wildland-urban interface that will incorporate professional training as well as a community outreach and education campaign to increase awareness of defensible space and fuels management.

   In El Dorado County, the El Dorado Fire Safe Council received a grant for a project to assist residents with hazardous tree removal to slow the spread of the bark beetle infestation. The project will also assist with removing stressed and injured trees damaged by the Caldor Fire.

   The Wildfire Prevention grants are funded as part of the State's Wildfire and Forest Resilience Strategy, in part with Cap-and-Trade auction proceeds administered by the California Climate Investments Greenhouse Gas Reduction Fund. In December 2022, CAL FIRE announced the availability of up to $120 million for Wildfire Prevention grants.

4) **Advance payments**. Current law allows the Director of CAL FIRE to provide advance payments, up to 25% of the total Wildfire Prevention grant, to help the grantees start work on a fire prevention projecting instead of waiting for the grant funding to come in or using their own funds until the state pays them back.

   According to CAL FIRE, this authorization has been widely utilized since 2018 by the CAL FIRE Director to provide advance payments to 342 grantees. Of those, 174 had requested at

least two advance requests, 49 had three requests, 26 had four requests, 8 had 5 and only 1 had 6 requests. All of the requests were approved. Justification for advance payment range from deposits needed to start contracting work, to funds needed to buy tools ahead of time. These advances are critical to performing work in a timely manner.

SB 901 (Dodd, Chapter 626, Statutes of 2018) authorized CAL FIRE to provide Forest Health grants to specified eligible entities for the implementation and administration of projects and programs to improve forest health and reduce GHG, and authorized, until January 1, 2024, advance payments up to 25% of the total grant award. That law requires CAL FIRE to report to the Legislature on the outcome of CAL FIRE's use of advance payments for Forest Health local assistance grants. That report has been completed, but has not yet received final approval for legislative distribution. While the report will only be related to the advance payments for the Forest Health grants, it might have information germane to the Wildfire Prevention grant program that could inform this bill.

5) **Sunset extension**. This bill will extend the sunset date by ten years for CAL FIRE's authority to provide advance payments, from January 1, 2024, to January 1, 2034.

According to the author, extending the sunset supports the state's goals to expand its fuels management crews, grant programs, and partnerships to scale up fuel treatments to 500,000 acres annually by 2025; support communities, neighborhoods, and residents in increasing their resilience to wildfire; and, improve and align forest management regulations.

6) **Related legislation**.

AB 156 (Committee on Budget, Chapter 569, Statutes of 2022) authorized advance payments pursuant to the Wildfire Prevention grant program until January 1, 2025, for grants that are awarded in accordance with a new state pilot program to explore possible improvements to the state's existing advance payment practices for state-funded local assistance grants.

AB 1956 (Limón, Chapter 632, Statutes of 2018) established the Local Assistance grant program for fire prevention and required CAL FIRE to prioritize local assistance grant funding applications from local agencies based on the "Fire Adapted Community" list.

AB 211 (Committee on Budget, Chapter 574, Statutes of 2022) deleted the sunset date for advance payments pursuant to the Forest Health grants established by SB 901 (Dodd).

AB 901 (Dodd, Chapter 626, Statutes of 2018) authorizes CAL FIRE to provide Forest Health grants to specified eligible entities for the implementation and administration of projects and programs to improve forest health and reduce GHG, and authorized, until January 1, 2024, advance payments up to 25% of the total grant award.

REGISTERED SUPPORT / OPPOSITION:

Support

American Property Casualty Insurance Association
Association of California Water Agencies
California Forestry Association
Pacific Forest Trust

Rural County Representatives of California
Sierra Business Council
Upper San Gabriel Valley Municipal Water District

Opposition

None on file.

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 340 (Vince Fong) – As Introduced January 30, 2023

SUBJECT: California Environmental Quality Act: grounds for noncompliance

SUMMARY: Requires any written allegations of noncompliance with the California Environmental Quality Act (CEQA) to be presented to the public agency at least 10 days before the final public hearing on the project. Prohibits any later written comments from being included in the record the proceedings or serving as the basis for judicial challenge of the agency's action.

EXISTING LAW:

1) CEQA requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines). (Public Resources Code (PRC) § 21000, et seq)

2) Authorizes judicial review of CEQA actions taken by public agencies, following the agency's decision to carry out or approve the project, subject to statutes of limitations ranging from 30 to 180 days (PRC § 21167):

    a) Challenges alleging improper determination that a project may have a significant effect on the environment, or alleging an EIR doesn't comply with CEQA, must be filed within 30 days of filing of the notice of determination (NOD);

    b) Challenges alleging improper determination that a project is exempt from CEQA must be filed within 35 days of filing of the notice of exemption, or 180 days if no notice has been filed and,

    c) Challenges alleging an agency has failed to determine whether a project has a significant effect on the environment must be filed within 180 days.

3) Prohibits an action from being brought on alleged grounds of noncompliance with CEQA unless the alleged grounds for noncompliance were presented to the public agency orally or in writing by any person during the public comment period or prior to the close of the public hearing on the project before issuance of the NOD. These requirements do not apply to the Attorney General, in cases where there was no public hearing or other opportunity for members of the public to raise objections orally or in writing before the approval of the project, or if the public agency failed to give the notice required by law. (PRC § 21177)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Background**. In order to enforce compliance with CEQA, actions taken by public agencies can be challenged in superior court once the agency approves the project. CEQA appeals are

subject to unusually short statutes of limitations. Under current law, CEQA lawsuits generally must be filed within 30 to 35 days, depending on the type of decision. The courts are required to give CEQA actions preference over all other civil actions. The petitioner must request a hearing within 90 days of filing the petition and, generally, briefing must be completed within 90 days of the request for hearing. Courts are required to commence hearings on CEQA appeals within one year of filing, to the extent feasible.

CEQA establishes procedures for the preparation and certification of the administrative record (e.g., application materials, staff reports, transcripts or minutes of public proceedings, notices, written comments, and written correspondence prepared by or submitted to the public agency regarding the proposed project). Generally, the record is required to be prepared and certified within 60 days of the petitioner's request.

CEQA requires the alleged grounds for noncompliance to be presented to the public agency, and the person challenging the decision to have objected to approval of the project, orally or in writing during the public comment period or before the close of the public hearing on the project. However, these requirements do not apply to the Attorney General, to any alleged grounds for noncompliance for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing before the approval of the project, or if the public agency failed to give the notice required by law.

Exhaustion of administrative remedies is a prerequisite to challenging any project approval under CEQA. The basic premise is that a person or organization may not bring a legal challenge to an agency's decision unless that person or organization has participated during the agency's administrative review process. A petitioner must "exhaust" his or her administrative remedies by first raising arguments to the agency during its consideration of the project. By doing so, the agency has the opportunity to address the issue before its actions are subject to judicial review.

Exhaustion of administrative remedies requires that a person preparing written or oral comments on an environmental document must allege specific violations of CEQA procedures or substantive findings. General objections to the project are not sufficient to alert an agency to an objection based on CEQA.

2) **Author's statement**:

> California is facing a severe housing shortage and affordability crisis forcing families and businesses to greener grass across the country. The abuse during pending CEQA hearings stifles our response to these crises. AB 340 will prevent a project opponent from gaining standing to sue unless he or she presented the alleged CEQA issue during the public comment period for the project proposal's hearing. By preventing late hits, CEQA abuses will be minimized while we tackle the mounting housing shortage.

3) **Should written comments be cut off before the end of the agency's deliberations**? The CEQA Guidelines (§15207) provide "(i)f any public agency or person…fails to comment within a reasonable time as specified by the Lead Agency, it shall be assumed, without a request for a specific extension of time, that such agency or person has no comment to make. Although the Lead Agency need not respond to late comments, the Lead Agency may choose to respond to them."

Although the CEQA Guidelines and judicial precedent indicate that a lead agency does not need to respond to a late comment in writing, the lead agency does need to exercise discretion because all comments – including late ones – become part of the project's administrative record.

Sometimes interested parties to a project may submit comments late in the review process and perhaps voluminous amounts of content in their comment as a tactic to delay a project – this is referred to as "document dumping." However, this may not always be the case – interested parties, who submit late comments, may raise genuine, significant issues that were not adequately addressed in the environmental review or provide important information that was not available earlier in the process.

To prevent "document dumping," this bill proposes to cut off all written comments 10 days before the final public hearing on the project, regardless of the volume of the comments or whether they relate to existing or new issues. This may be fair in the case of a local development project, where the project has been adequately noticed, heard by the planning commission, the final EIR has been published, and there are no changes prior to the city council hearing and approving the project. However, there are many other cases where the 10-day deadline would not provide a fair opportunity for the public to comment on the project. For example:

a) The final EIR is not published until after the 10-day deadline.

b) The final public hearing is the first public hearing on the project, and the agenda may not even be published until after the 10-day deadline.

c) The agency makes changes to the project at the final public hearing, or within the preceding 10 days.

4) **A more balanced precedent for addressing late comments**. Beginning with SB 292 (Padilla), Chapter 353, Statutes of 2011, several project-specific CEQA streamlining bills have included the following language limiting the submission and consideration of written comments after the close of the public comment period on the draft EIR:

> *The lead agency need not consider written comments submitted after the close of the public comment period, unless those comments address any of the following:*
>
> *(A) New issues raised in the response to comments by the lead agency.*
>
> *(B) New information released by the public agency subsequent to the release of the draft environmental impact report, such as new information set forth or embodied in a staff report, proposed permit, proposed resolution, ordinance, or similar documents.*
>
> *(C) Changes made to the project after the close of the public comment period.*
>
> *(D) Proposed conditions for approval, mitigation measures, or proposed findings required by Section 21081 or a proposed reporting and monitoring program required by paragraph (1) of subdivision (a) of Section 21081.6, if the lead agency releases those documents subsequent to the release of the draft environmental impact report.*

(E) New information that was not reasonably known and could not have been reasonably known during the public comment period.

It must be noted that each of these bills has related to only one, high-profile project, and included several other relevant conditions, including a requirement for the lead agency to prepare an EIR, hold workshops and hearings prior to the close of the comment period, and prepare the administrative record concurrently, in electronic form. While these conditions could be applied as an alternative for lead agencies wishing to do the groundwork to avoid late issues and comments, this approach may not be suitable in all CEQA cases, particularly where there is more limited public notice and review, such as when no EIR is prepared.

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

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association
California Building Industry Association
California Central Valley Flood Control Association
El Dorado Irrigation District
Valley Ag Water Coalition
Western Manufactured Housing Communities Association

Opposition

Livable California
State Building and Construction Trades Council of California

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 388 (Connolly) – As Amended March 2, 2023

SUBJECT: Wildfire and Forest Resilience Action Plan: implementation strategies: roadmap.

SUMMARY: Requires the Department of Forestry and Fire Protection (CAL FIRE) to establish a roadmap for developing and deploying larger landscape level projects to contribute to the achievement of the goals of the implementation strategy for the Wildfire and Forest Resilience Action Plan (Action Plan).

EXISTING LAW:

1) Establishes, pursuant to Executive Order No. B-52-18, a Forest Management Task Force, now known as the Wildfire and Forest Resilience Task Force (Task Force), involving specified state agencies to create the action plan for wildfire and forest resilience. (Public Resources Code (PRC) § 4005)

1) Requires the Task Force to develop a "Wildfire and Forest Resilience Action Plan" (Action Plan) as a strategy to integrate recommendations from existing state and federal plans that tackle various aspects of the state's forest health and wildfire crisis. Requires the Task Force to develop a comprehensive implementation strategy to track and ensure the achievement of the goals and key actions identified in the Action Plan issued by the task force in January 2021. (PRC § 4771)

2) Requires the Task Force, including the Natural Resources Agency (NRA), the California Environmental Protection Agency, the Office of Planning and Research, and CAL FIRE, in coordination with certain public agencies, to develop a comprehensive implementation strategy to track and ensure the achievement of the goals and key actions identified in the Action Plan. (PRC § 4771)

3) Establishes the Regional Forest and Fire Capacity Program (RFFC) at the Department of Conservation (DOC) to support regional leadership to build local and regional capacity and develop, prioritize, and implement strategies and projects that create fire adapted communities and landscapes by improving ecosystem health, community wildfire preparedness, and fire resilience. (PRC § 4208, et seq)

4) Directs NRA to advance efforts to conserve biodiversity to, among other things, strategically prioritize investments in cooperative, high-priority actions that promote biodiversity protection, habitat restoration, wildfire-resilient, sustainably managed landscapes and other conservation outcomes. (Executive Order B-52-18)

5) Requires the Task Force, including the Natural Resources Agency (NRA), the California Environmental Protection Agency, the Office of Planning and Research, and CAL FIRE, in coordination with certain public agencies, to develop a comprehensive implementation strategy to track and ensure the achievement of the goals and key actions identified in the Wildfire and Forest Resilience Action Plan. (PRC § 4771)

6) Establishes the Regional Forest and Fire Capacity Program (RFFC) at the Department of Conservation (DOC) to support regional leadership to build local and regional capacity and develop, prioritize, and implement strategies and projects that create fire adapted communities and landscapes by improving ecosystem health, community wildfire preparedness, and fire resilience. (PRC § 4208, et seq)

7) Directs NRA to advance efforts to conserve biodiversity to, among other things, strategically prioritize investments in cooperative, high-priority actions that promote biodiversity protection, habitat restoration, wildfire-resilient, sustainably managed landscapes and other conservation outcomes. (Executive Order B-52-18)

THIS BILL:

1) States the intent of the Legislature to match funding levels to the scale of the problem and the scale of regionally developed plans and projects.

2) Requires the director of CAL FIRE, in consultation with the Task Force, to establish a roadmap for developing and deploying larger landscape level projects to contribute to the achievement of the goals outlined in the implementation strategy.

3) Authorizes the director to achieve the goals and key actions identified in the implementation strategy by directly awarding regional block grants to eligible regional entities, forest collaboratives, and partnerships to implement regional plans, strategies, agreements, and initiatives, including, but not limited to, regional priority strategies and multijurisdictional landscape-scale projects.

4) Authorizes CAL FIRE to transfer funding to other state agencies or departments to achieve the goals and key actions identified in the implementation strategy.

5) Requires CAL FIRE to provide the Task Force, and post on its internet website, a description, amount, and outcome of each regional block grant or fund transfer provided pursuant to this bill.

FISCAL EFFECT: Unknown.

COMMENTS:

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

> Catastrophic wildfire has increased in frequency and severity over the last decade and continues to be one of California's greatest threats to loss of human life, property, and ecosystem function. Wildfires are also increasingly happening across large landscapes (tens to hundreds of thousands of acres).
>
> In recognition of the need to better plan for wildfire and build resilience regionally, the Legislature codified the Regional Forest and Fire Capacity Program (RFFC) at the Department of Conservation (DOC) to catalyze the building of regional capacity to develop regional priority plans for purposes of wildfire prevention and resilience.

AB 388 would build upon that effort to ensure CAL FIRE has the ability to direct funding at the regional level for collaboratives such as those that resulted from the RFFC process to implement landscape-scale forest restoration and wildfire resilience initiatives.

2) **Regional fire prevention**. California's forests naturally adapted to low-intensity fire, nature's preferred management tool, but Gold Rush-era clearcutting followed by a wholesale policy of fire suppression resulted in the overly dense, ailing forests that dominate the landscape today. Compounding risks have made it nearly impossible for nature to self-correct. A cycle of catastrophic wildfires, longer fire seasons, severe drought, intense wind, tree mortality, invasive species, and human population pressure threaten to convert conifer forests to shrublands and shrublands to invasive grasses.

   The health and wellbeing of California communities and ecosystems depend on urgent and effective forest and rangeland stewardship to restore resilient and diverse ecosystems. With California's landscape heavily divided among multiple landowners, coordinated stewardship is critical to success.

   Recent wildfires have been the deadliest, most destructive, costliest, and largest in state history, while more than 129 million trees, primarily in the Sierra Nevada, have died from drought and insects since 2010.

   It is estimated that as many as 15 million acres of California forests need some form of restoration. This area is composed of approximately 10 million acres of federal lands and five million acres of private and other public lands ranked as high priority for reducing wildfire threats to maintain ecological health.

   Since fire doesn't abide by human-made land-owner boundaries, regional coordination is critical to forest health management and wildfire prevention.

3) **Wildfire and Forest Resilience Task Force**. The Task Force was established in 2018 to develop a framework for establishing healthy and resilient forests that can withstand and adapt to wildfire, drought and a changing climate. The Task Force developed the Wildfire and Forest Resilience Action Plan (Action Plan) to integrate recommendations from existing state and federal plans that tackle various aspects of the state's forest health and wildfire crisis.

4) **California Wildfire and Forest Resilience Action Plan**. The January 2021 Action Plan is the initial five-year plan for implementing the Agreement for Shared Stewardship of California's Forest and Rangelands (Shared Stewardship Agreement) with the United States Forest Service (USFS)**,** coordinating the state's forestry efforts with other federal, local, tribal, regional, and private organizations. The Action Plan details four goals, each with a subset of actions.

   - Goal 1 encompasses efforts to coordinate federal and state agencies in the treatment of 500,000 acres annually by 2025 through the Shared Stewardship Agreement.

   - Goal 2 is to strengthen protection of communities to underscore building resilience in threatened communities through adaptive strategies, such as "hardening homes,

buildings, and infrastructure, increasing defensible space and fuel breaks, and strengthening community planning and preparedness."

- Goal 3 identifies forest thinning and prescribed fire as strategies for promoting the growth of more fire-resistant trees, and dually aims to expand forested landscapes and stimulate rural economic development and sustainable job markets.

- To reduce threats of wildfire and climate change while supporting adaptation efforts, Goal 4 communicates the need for bold innovation in monitoring and research. This will involve utilizing best available science, and expanding monitoring and reporting programs.

The Action Plan aligns with investments in last fiscal year's budget to combat wildfire risk and improve the health of forested landscapes. The Action Plan will be updated every 5 years; the next plan will be released in January 2026.

5) **Regional Forest and Fire Capacity Program.** At the federal level, the USFS is moving toward a regional framework of coordinated management and shared resources, in which national forest units are grouped into "zones" of four to six national forests, where individual work plans and resources are increasingly integrated. Furthermore, with a renewed national prioritization of Shared Stewardship Agreements, the USFS continues to support collaborative forest management with California and stakeholders across all lands at increasingly large landscape scales.

   Despite this progress, many of the newly established collaboratives lack guidance on assessing risk and developing landscape-scale strategies. They also lack dedicated funding to sustain their efforts and build a pipeline of projects. To fill this gap, in 2019, pursuant to AB 9 (Wood, Chapter 225, Statutes of 2021), DOC launched the RFFC program to build the capacity of regional collaboratives through a common framework of regional forest and community resilience plans.

   Through RFFC, DOC provides block grants to regional entities to develop regional strategies that develop governance structures, identify wildfire risks, foster collaboration, and prioritize and implement projects within the region to achieve the goals of the program.

   Block grants are used by recipients to support partner capacity, project readiness, implementation of demonstration projects, and regional priority planning to achieve landscape-level and community wildfire resilience consistent with the Action Plan as well as the California Forest Carbon Plan and Executive Order B-52-18.

   Regional block grantees are expected to partner extensively across their region to identify priorities and develop projects. Current block grantees partner heavily with state, federal, tribal, and local governments as well as water agencies, resource conservation districts, fire safe councils, and other nonprofits.

6) **This bill**. The Action Plan notes that the RFFC program does not cover all high-risk areas of the state, and not all forested areas are covered within existing regional initiatives. Further, the Action Plan identifies a key action (1.30) for DOC to develop a regional pipeline of shovel-ready projects and investment strategies that provide dedicated ongoing funding for

implementation. Key regional stakeholders include the Sierra Nevada, Tahoe, Coastal, and Santa Monica Mountains Conservancies in allocating funds.

Consistent with that key action, and building off the RFFC efforts, AB 388 would require CAL FIRE to establish a roadmap for developing and deploying larger landscape level projects to achieve the goals outlined in the implementation strategy, and would authorize regional block grants to eligible regional entities, including forest collaboratives, and partnerships to implement regional plans, strategies, agreements, and initiatives.

The Humboldt and Mendocino Redwoods Companies write in support:

> While state funding has increased over the last few years for fuel reduction projects, the vast majority of projects involve small acreages. If the state is to meet its goal of treating 500,000 acres annually by 2025 (1 million acres annually in conjunction with federal partners) funded projects need to be sized at the landscape level to make any meaningful contribution towards this goal. Landscape-level projects will also provide large areas of wildfire-resilient forests where firefighters have an upper hand in stopping wildfires moving towards communities.

7) **Related legislation**. AB 788 (Petrie Norris) would require the Task Force to annually compile and post on its internet website specified information relating to state and federal grant programs relating to fire prevention. AB 788 is scheduled to be heard in the Assembly Natural Resources Committee on March 27.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Resource Conservation Districts
Humboldt and Mendocino Redwood Companies
The Nature Conservancy
Sierra Business Council

Opposition

None on file.

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 692 (Jim Patterson) – As Introduced February 13, 2023

SUBJECT: California Environmental Quality Act: exemption: egress route projects: fire safety

SUMMARY: Exempts from the California Environmental Quality Act (CEQA) egress route projects in subdivisions reviewed by the State Board of Forestry and Fire Protection (BOF) where the BOF recommends creation of secondary access to the subdivision.

EXISTING LAW:

1) Requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines). (Public Resources Code (PRC) § 21000, et seq)

2) Requires on or before July 1, 2021, and every five years thereafter, the BOF, in consultation with the State Fire Marshall, to survey local governments to identify existing subdivisions (i.e., an existing residential development of more than 30 dwelling units) in the state responsible area (SRA) or locally-designated "very high fire hazard severity zones" (VHFHSZ) without a secondary egress route that are at significant fire risk, then develop recommendations to improve the subdivision's fire safety. Authorizes the recommendations to include, but not be limited to, the following (PRC § 4290.5):

    a) Creating secondary access to the subdivision;

    b) Improvement to existing access road; and,

    c) Other additional fire safety measures.

THIS BILL:

1) Exempts from CEQA an egress route project to improve emergency access to and evacuation from a subdivision without a secondary egress route if the subdivision has been identified by the BOF, and the BOF recommends the creation of a secondary access to the subdivision, provided all of the following conditions are met:

    a) The subdivision has insufficient egress routes, as determined by the lead agency.

    b) The subdivision is located in either a SRA classified as high or very high fire hazard severity zone or a VHFHSZ.

    c) The location of the project does not contain wetlands or riparian areas.

d) The project does not harm or take any species protected by the federal Endangered Species Act, the Native Plant Protection Act, the CEQA Guidelines, or the California Endangered Species Act.

e) The project does not cause the destruction or removal of any species protected by an applicable local ordinance.

f) The project does not affect known archaeological, historical, or other cultural resources.

g) The project is carried out by a public agency.

h) The public agency consults with the Department of Fish and Wildlife during project development.

i) The egress route is scaled to the existing population of the development, as specified.

j) The lead agency determines that the primary purpose of the project is fire safety egress.

k) Any commercial timber harvest is incidental to the project's primary purpose and complies with the Forest Practice Act.

l) The lead agency determines that the project has obtained, or is able to obtain, all necessary funding and any federal, state, and local approvals within one year of the filing of the notice of exemption.

m) All roads that comprise the egress route are publicly accessible to vehicular traffic at all times.

2) Requires the lead agency, before determining that a project is exempt, to hold a noticed public meeting to hear and respond to public comments.

3) Requires the lead agency to file a notice of exemption with the Office of Planning and Research (OPR) and the county clerk in the county in which the project is located.

4) Sunsets January 1, 2030

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

> California continues to see a rise in deadly wildfires, with 33 lives lost in 2020 alone. In 2018, the Board of Forestry was tasked with identifying communities at high risk of experiencing a wildfire who also lack sufficient egress (exit) routes from their communities. AB 692 builds upon this process by exempting from CEQA these critical projects that are identified by the Board. By doing so, the Legislature will be appropriately expediting projects that could prove vital to saving lives in future fires.

2) **CEQA review for roads**. 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.

   It should be noted that CEQA already provides alternatives to comprehensive environmental review for minor projects, including road maintenance. First, the CEQA Guidelines provide a categorical exemption for work on existing facilities where there is negligible expansion of an existing use, specifically including "(e)xisting highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities," (CEQA Guidelines, Section 15301(c)). Second, if the project is not exempt from CEQA, but the initial study shows that it would not result in a significant effect on the environment, the lead agency must prepare a negative declaration, and no EIR is required. In addition, a road project that has been considered in a local planning EIR would be subject to abbreviated review, or possibly exemption, depending on the project's potential to have a significant effect on the environment.

3) **Local fire safety planning**. Cities and counties are required to adopt a comprehensive general plan with various elements including a safety element for protection of the community from unreasonable risks associated with various hazards, including wildfires. CAL FIRE acknowledges the importance of planning and its importance to wildland fire safety and risk mitigation. Land use planning incorporates safety element requirements for state SRA and VHFHSZ; requires local general plan safety elements, upon the next revision of the housing element on or after January 1, 2014, to be reviewed and updated as necessary to address the risk of fire in the SRA and VHFHSZ; requires each safety element update to take into account the most recent version of OPR's "Fire Hazard Planning" document; and requires OPR to include a reference to materials related to fire hazards or fire safety.

   Local jurisdictions with land in the SRA and VHFHSZ must revise their general plan safety elements to include information relating to the protection of the planning area from wildfire, and update that information whenever the housing element is amended. New requirements for wildfire planning in the safety element have increased wildfire planning efforts. Since April 2013, the BOF has reviewed 45 safety elements, and has received letters back from jurisdictions explaining which recommendations they did or did not incorporate from 11 of them. AB 2911 (Friedman), Chapter 641, Statutes of 2018, provided more tools for the BOF to collaborate with local governments and enhanced its ability to recommend changes based on best practices.

Many developments in the SRA and VHFHSZ were constructed prior to building standards and the fire prevention regulations developed by the BOF, including limits on dead end roads. These older nonconforming developments are not required to take proactive steps to reduce their fire risk, and could be in jeopardy because their homes are not fire resistant and they do not have secondary access roads. Lack of a secondary road is a serious problem that could leave people trapped and unable to escape a wildfire.

4) **Third time's the charm**? This bill is essentially the same as AB 1154 (Patterson, 2022), which was held in the Senate Appropriations Committee, and AB 394 (Obernolte, 2019), which was vetoed by Governor Newsom, with the following message:

> This bill exempts from the California Environmental Quality Act (CEQA), until January 1, 2025, egress route projects or activities undertaken by a public agency. The affected projects include those that are specifically recommended by the State Board of Forestry and Fire Protection to improve the fire safety of an existing subdivision when certain conditions are met.
>
> California's devastating wildfires of 2017 and 2018 amplified the urgent imperative to mitigate risk and build robust community emergency plans, especially for our most vulnerable in the Wildland-Urban Interface (WUI). However, the CEQA exemption provided in this bill is premature and may result in unintended consequences. Without better information on the number, location and potential impacts of future fire safety road construction projects, it is not clear whether statutory changes are needed. Furthermore, it is important that we build solutions around the unique and targeted needs of each community.

REGISTERED SUPPORT / OPPOSITION:

Support

Fresno County Supervisor Sal Quintero
Humboldt and Mendocino Redwood Companies
Inyo County Board of Supervisors
Livable California
Madera County Board of Supervisors
Rural County Representatives of California (RCRC)

Opposition

None on file

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 704 (Jim Patterson) – As Introduced February 13, 2023

SUBJECT: Energy: building standards: photovoltaic requirements

SUMMARY: Specifies that any residential construction intended to "repair, restore, or replace" a residential building that was damaged or destroyed as a result of a disaster in an area in which the Governor has declared a state of emergency to comply with the state's requirement for photovoltaic (PV) systems that were in effect at the time the building was originally constructed.

EXISTING LAW:

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

2) Requires the California Energy Commission (CEC) to establish energy efficiency standards for new residential and new nonresidential buildings. (Public Resources Code § 25402 et seq.)

3) Pursuant to the California Residential Building Code, specifies that any work, addition to, remodel, repair, renovation, or alteration of any building or structure may be defined as "new construction" when 50% or more of the exterior weight bearing walls are removed or demolished. (Part 2.5 of Title 24 of the California Code of Regulations)

4) Requires CEC to establish regulations to develop and implement a comprehensive program to achieve greater energy savings in California's existing residential and nonresidential building stock. The program is targeted at buildings that "fall significantly below" the current Title 24 energy efficiency standards. Requires the program to minimize the overall costs of establishing and implementing the energy efficiency program requirements. For residential buildings, specifies that the regulations ensure that the energy efficiency assessments, ratings, or improvements do not unreasonably or unnecessarily affect the home purchasing process or the ability of individuals to rent housing. (Public Resources Code § 25943)

5) Requires CEC to establish annual targets for statewide energy efficiency savings and demand reduction that will achieve a cumulative doubling of statewide energy efficiency savings in electricity and natural gas final end uses by January 1, 2030. (Public Resources Code § 25310)

6) Exempted, until January 1, 2023, residential construction intended to "repair, restore, or replace" a residential building that was damaged or destroyed as a result of a disaster in an area in which the Governor has declared a state of emergency before 2020 from the state's requirement for PV systems, if:

   a) The income of the owner of the residential building is at or below the median income for the county in which the building is located;

   b) The construction does not exceed the square footage of the property at the time it was damaged;

   c) The new construction is located at the site of the home that was damaged; or,

   d) The owner of the residential building did not have code upgrade insurance at the time the property was damaged. (Public Resources Code § 25402.13)

THIS BILL:

1) Requires that residential construction intended to repair, restore, or replace a residential building damaged or destroyed as the result of a disaster in an area in which a state of emergency has been proclaimed to comply with requirements regarding PV systems that were in effect when the building was originally constructed.

   a) Specifies that this provision applies when following conditions are met:

      i) The income of the owner is at or below the median income for the county in which the residential building is located, as determined by the Department of Housing and Community Development state income limits;

      ii) The construction does not exceed the square footage of the property at the time that it was damaged;

      iii) The new construction is located on the site of the home that was damaged; and,

      iv) The owner of the residential building did not have code upgrade insurance at the time the property was damaged.

   b) Sunsets this provision on January 1, 2027.

2) Requires CEC to collect data, to the extent feasible, from local permitting agencies on the use and application of the above provision. Requires CEC to report to the relevant policy committees on or before March 1, 2025 and March 1, 2026. Sunsets this provision on January 1, 2027.

3) Specifies that no reimbursement is required by this bill pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the bill, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**: "AB 704 is an appropriate, fair, and limited measure to help ease the burden of rebuilding one's life after all was destroyed by a wildfire."

2) **California's solar standards**. The 2019 Building Energy Efficiency Standards went into effect on January 1, 2020. The new standards are the first in the nation to require PV systems for new construction. The standards also include improved thermal building envelope standards (i.e., insulating the interior), residential and nonresidential ventilation requirements, and nonresidential lighting requirements. For residential buildings, the standards are expected to result in about 53% less energy use than under the 2016 standards. The CEC further estimates that the new standards will reduce GHG emissions by 700,000 metric tons over three years.

   Statute requires that CEC's standards must be "cost-effective." Moreover, unlike other building standards, solar earns money for homeowners as their homes generate electricity. CEC estimates that based on a 30-year mortgage, the new standards will add about $40 per month in costs and result in about $80 per month in reduced energy costs. On average, a solar system adds about $9,500 to the cost of a new home and will result in a savings of $19,000 in energy costs over 30 years. The up-front costs for solar are expected to continue to decrease.

   CEC established a few exemptions to the new solar requirement. Primarily, homes that are shaded by trees, hills, other structures, etc. are not required to install solar. This may exclude a number of homes impacted by fires in wooded areas. Homeowners in areas with community solar programs are also exempt from the requirement. Additionally, reduced system size is permitted for low-rise residential with two stories and for low-rise multifamily or single-family homes with three or more stories.

3) **Emergency declarations**. Unfortunately, California has had a large number of emergency declarations over the last several years, primarily due to fires. This bill would apply to any home damaged or destroyed in a disaster in an area in which the Governor has declared a state of emergency. On March 2nd, the Governor declared a state of emergency in 13 counties due to severe winter storms. In July 2022, the Governor declared a state of emergency in Siskiyou County due to fires.

4) **Suggested amendment**. This bill reinstates a list of criteria to qualify for an exemption from the state's PV requirement. Currently, the bill states that "one or more" of the criteria must be met. The *committee may wish to amend the bill* to clarify that all of the criteria must be met in order to qualify for an exemption.

5) **Previous legislation**:

   a) AB 178 (Dahle, Chapter 259, Statutes of 2019) exempted, until January 1, 2023, residential construction from complying with the solar requirements in the recently adopted building standards when the construction is in response to a disaster in an area in which a state of emergency has been proclaimed by the Governor.

   b) AB 1078 (Patterson, 2022) would have extended the exemption established by AB 178 for one year, until January 1, 2024. This bill was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Rural County Representatives of California

Opposition

None on file

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 706 (Luz Rivas) – As Introduced February 13, 2023

SUBJECT: Leasing of public lands: minerals other than oil and gas.

SUMMARY: Makes various changes to the statutes governing the State Lands Commission's (SLC) authority over granting geological or geophysical exploration permits for minerals.

EXISTING LAW:

1) Authorizes SLC, when a contractor or permittee has a contract with, or a permit from, the federal government or any authorized public agency to dredge swamp, overflowed, marsh, tide or submerged lands or beds of navigable streams, channels, rivers, creeks, bays, or inlets for the improvement of navigation, reclamation, or flood control, to allow the contractor or permittee to have sand, gravel, or other spoils dredged from the sovereign lands of the state located within the areas specified in the contract or permit upon those terms and conditions and for such consideration as will be in the best interests of the state. (Public Resources Code (PRC) § 6303 (a))

2) Authorizes SLC to issue prospecting permits and leases for the extraction and removal of minerals, other than oil and gas or other hydrocarbon substances, from specified lands. Prohibits SLC from issuing a permit or lease until it has been submitted to, and approved by, the Attorney General (AG), as specified. (PRC § 6890 (a))

3) Authorizes the SLC, when it appears to be in the public interest, to grant leases for the extraction of minerals other than oil and gas to the highest responsible bidder by competitive bidding from tide and submerged lands of the state whenever it appears that the execution of such leases and the operations thereunder will not interfere with the trust upon which such lands are held or substantially impair the public rights to navigation and fishing. (PRC § 6900)

4) Grants a permittee entitlement to a lease for not more than 960 acres of land included in a prospecting permit if the presence of commercially valuable deposits of minerals has been discovered to the satisfaction of the commission. Requires the permittee to pay an annual rental of not less than $1 per acre. (PRC § 6895 (a))

5) Requires a permittee to pay the state 20% of the gross value of the minerals the permittee secures from the land included in the permit until the permittee applies for a lease for the same land. (PRC § 6896)

6) Limits the term for a lease to 20 years or less and grants the lessee preferential right to renew the lease for successive periods not to exceed 10 years each. (PRC § 6898)

THIS BILL:

1) Deletes the requirement for the AG to review a prospective permit or lease for compliance with applicable laws and regulations before the SLC may issue the permit or lease.

2) Authorizes the SLC to grant nonexclusive geological or geophysical exploration permits for minerals upon such terms and conditions as SLC may prescribe. Provides that any such permit shall not give the permittee any preferential rights to a lease.

3) Deletes the entitlement for mining leases and replaces with prioritization over other applicants for mining leases for permittees of prospecting permits upon discovery of commercially valuable deposits of minerals within the limits of the permit.

4) Deletes the reference to the acreage size of a prospecting permit.

5) Provides that prioritization shall expire after 365 days unless the permittee submits a complete lease application to mine the discovered minerals, in which case the priority shall expire upon SLC's consideration or applicant's withdrawal of the application.

6) Requires that mineral leases be limited to the minimum area required for mining.

7) Deletes the requirement that the area selected by the permittee shall be in compact form and, if surveyed, shall be described by the legal subdivisions of the public lands surveys; if unsurveyed, the area shall be surveyed by SLC at the expense of the applicant for the lease, in accordance with rules and regulations prescribed by SLC, and the lands leased shall be conformed to, and taken in accordance with, the legal subdivisions of the surveys.

8) States that nothing in PRC § 6895 shall be construed to require SLC to issue a mineral lease.

9) Deletes the requirement that the lease shall provide for the payment of an annual rental of not less than one dollar ($1) per acre and replaces it payment of fair market rental value, as determined by SLC.

7) Requires the permittee to pay the state 20% of the gross value of all minerals secured from the land included in the permit until the permittee applies for a lease for the same land.

8) Delete the preferential right to renew a lease for successive periods up to 10 years.

9) Makes code cleanup changes to correct outdated pronouns.

FISCAL EFFECT: Unknown.

COMMENTS:

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

> California's world-leading and cutting edge clean energy goals are driving interest in procuring materials that could help California meet its goals, including minerals such as lithium ion. A recent report from California's Blue Ribbon Commission on Lithium Extraction in California provides recommendations to guide the exploration of a lithium industry. Many of the applicable prospecting and leasing laws in California originated before the nineteen-forties, during an era when mineral exploration was widespread and environmental protections were

scant. This bill will make important updates to current law, equipping California with the necessary tools to ensure that decisions about the use of public lands and resources are in the state's best interest as California continues to make strides in moving away from fossil fuels and toward clean energy. Eliminating and modernizing antiquated provisions from a bygone era, such as a preferential right to a lease, will ensure that the state's decision-making process is transparent and inclusive and that it provides meaningful opportunity for public engagement and tribal consultation.

2) **State Lands Commission**. Established in 1938, SLC manages four million acres of tide and submerged lands and the beds of natural navigable rivers, streams, lakes, bays, estuaries, inlets, and straits. SLC protects and enhances these public trust lands and their natural resources by issuing leases for use or development, providing public access, resolving boundaries between public and private lands. SLC issues prospecting permits and leases for the extraction and removal of minerals from lands belonging to the state. Only 20% of the seafloor has been mapped at high resolution, and we have only just begun to understand the resources of this environment. As California strives to meet its clean energy goals, it is likely there will be an increase in interest for geological or geophysical exploration permits for minerals.

3) **Streamlining permit review**. Under current law, the AG is required to review all permits before approval. That requirement was an historic provision added to provide an additional layer of approval to demonstrate the integrity of the process. Today, in practice, the AG relies on SLC for subject matter expertise, especially regarding compliance with requirements that SLC implements. AB 706 strikes that requirement to reduce unnecessary delay and burden on the AG in having to review lease provisions prior to SLC consideration. Given the state's budget deficit, this streamlining will reduce overall state costs in SLC permit approvals.

4) **New permits**. AB 706 creates an exploration permit to allow SLC to authorize exploration without the potential of having to grant any preferential rights to mining. Because prospecting permits are exclusive to a prescribed area, SLC could not issue more than one. The exploration permits, however, would be nonexclusive, allowing SLC to authorize multiple parties to conduct low-impact exploration. This approach would allow for more exploration to better understand the geologic nature of California's lands without the undesirable outcome of issuing mandatory, preferential rights to a mineral lease.

5) **Priority permits**. Under current law, after establishing to the satisfaction of SLC that commercially valuable deposits of minerals have been discovered within the limits of any permit, the permittee is entitled to a lease for not more than 960 acres of the land included in the prospecting permit, if are that many acres within the permit.

   [SLC currently has five solid mineral leases, but only one originated from a prospecting permit (for gold), but that leasee stopped mining the state portion of the lease in 2014.]

   SLC believes that the Legislature created this lease entitlement to incentivize miners to prospect for and ultimately extract valuable minerals. Although many minerals are essential to technological development and manufacturing, mineral extraction can cause significant environmental effects. The Legislature understands these impacts better today than it did at the time it created the lease-entitlement incentive (prior to the 1940s). Subsequent legal requirements, like the California Environmental Quality Act, were not contemplated when

the previous statute was developed and create confusion on behalf of applicants and SLC on how to best address myriad considerations around these types of leases.

To avoid the ministerial issuance of a mining lease and to ensure greater harmony with current legal frameworks, AB 706 would amend current law so that SLC retains discretion on whether to issue a lease.

By granting priority to successful prospectors, mining competitors would be unable to seize an unfair advantage, using the fruits of a prospector's labor. Concurrently, SLC could deny applications for destructive mining projects. Thus, the bill would allow SLC to incentivize exploration for valuable minerals that could help meet California's clean energy goals when it was in the best interests of the state, yet eliminate the risk of a ministerial, destructive mining lease.

6) **Permit acreage**. Current law limits mining leases to a maximum of 960 acres. Modern mining projects may require lease space greater than 960 acres. However, land banking remains a concern. To address those competing concerns, AB 706 would repeal the reference to 960 acres and, instead limit a lease to "the minimum area required for mining."

   This change will require SLC to evaluate the applied-for lease space and confirm that it is necessary for the proposed mining project. If the applied-for lease space is in excess, SLC could deny the application or offer a lease that better reflects the space needs of the proposed project.

7) **Compensation for leasing state lands**. Current law requires permittees to pay a minimum rent of $1 per acre to the state for use of public lands. This amount is far below market value of any state lands. Fair market value is the highest price for a property that a willing buyer would have paid in cash to a willing seller, assuming that there is no pressure on either one to buy or sell; and, the buyer and seller know all the uses and purposes for which the property is reasonably capable of being used. Having a set specific rent amount in statute creates challenges because state lands vary greatly in value and because values change over time.

   There are currently four leases that pay rent to the state:

   Lease 8831: 116 acres at $1 per acre = $116/year (school lands aggregate)

   Lease 9451: 80 acres at $1 per acre = $80/year (school lands aggregate)

   Lease 8039: 657.87 acres at $5 per acre = $3,289.35/year (school lands precious metals)

   Lease 5464: 15,419 acres at $2.50 per acre = $38,547.50/year (sovereign lands lease with US Borax)

   AB 706 strikes the $1 amount and instead requires that minimum rent be the fair rental value of the lands prospectively.

   This approach better ensures that the state is adequately compensated while also maintaining applicability to any parcel at any time.

8) **Lease duration**. Under current law, lease terms can go up to 20 years with the preferential right to renew for successive periods up to 10 years.

   AB 706 strikes the preferential renewal language and just leaves the cap on the term of the lease at 20 years. AB 706 would override SLC's regulations which mirror current law authorizing leases to be issued for a term of 20 years, with option of renewal for successive periods of 10 years upon such terms and conditions as may be prescribed by SLC at the time of renewal. (California Code of Regulations, Title 2, Sec. 2201).

9) **Technical amendments**. AB 706 makes various, technical amendments to clean up the codes.

   Current law requires that the "area selected by the permittee shall be in compact form." It is unclear what "compact form" means. The SLC speculates that the Legislature enacted this requirement so that lease areas would be limited to the space necessary for a mining project. In any case, AB 706 repeals this requirement to be consistent in giving discretion to SLC over the applied-for lease area, and make it clearer that these "leases shall be limited to the minimum area required for mining."

   Last year, the Legislature enacted AB 1832 (L. Rivas, Chapter, Statutes of 2022) to repeal SLC's authority to grant leases or issue permits for the extraction or removal of hard minerals from tidelands and submerged lands of the state. AB 706 makes technical changes to statute to conform to AB 1832.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Lands Commission

Opposition

None on file.

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 788 (Petrie-Norris) – As Introduced February 13, 2023

SUBJECT: Fire prevention: grant programs: reporting

SUMMARY: Requires the Wildfire and Forest Resilience Task Force (Task Force), on or before July 1, 2024, and annually thereafter, to compile and post on its internet website specified information relating to specified state and federal grant programs relating to fire prevention.

EXISTING LAW:

1) Requires the Task Force to develop a comprehensive implementation strategy to track and ensure the achievement of the goals and key actions identified in the state's "Wildfire and Forest Resilience Action Plan" issued by the Task Force in January 2021. (Public Resources Code (PRC) § 4771)

2) Requires the Task Force to submit, as part of the implementation strategy, a report to the appropriate policy and budget committees of the Legislature on progress made in achieving the goals and key actions identified in the state's action plan, on state expenditures made to implement these key actions, and on additional resources and policy changes needed to achieve these goals and key action. (PRC § 4771 (e)(1))

3) Authorizes the Department of Forestry and Fire Protection (CAL FIRE) to administer the forestry assistance program to provide loans to encourage forest resource improvements and otherwise facilitate good forest land management through a program of financial, technical, and educational assistance, as well as through applied research. (PRC § 4792)

4) Requires the Governor's Office of Emergency Services (CalOES) to enter into a joint powers agreement with CAL FIRE to develop and administer a comprehensive wildfire mitigation program to encourage cost-effective structure hardening and retrofitting that creates fire-resistant homes, businesses, and public buildings, and facilitate vegetation management, the creation and maintenance of defensible space, and other fuel modification activities that provide neighborhood or communitywide benefits against wildfire. (Government Code § 8654.4)

5) Requires CAL FIRE to establish a local assistance grant program for fire prevention and home hardening education activities in California. (PRC § 4124.5)

6) Establishes the Federal Emergency Management Agency (FEMA) pursuant to President Carter's Executive Order 12127, effective April 1, 1979, to provide clear direction for emergency management and disaster response and recovery.

7) Establishes the federal Building Resilient Infrastructure and Communities program to support states, local communities, tribes and territories as they undertake hazard mitigation projects, reducing the risks they face from disasters and natural hazards. (42 United States Code (U.S.C.) § 203)

8) Establishes the federal Hazard Mitigation Grant Program to provide grants to communities during federal disasters. (42 U.S.C. 5133)

9) Establishes the federal Fire Management Assistance Grant Program to provide grant assistance to assist in reimbursement for equipment, supplies, and personnel to any state, tribal, or local government for the mitigation, management, and control of any declared fire on public or private forest land or grassland that threatens such destruction as would constitute a major disaster. (42 U.S.C. 5187)

THIS BILL:

1) Defines "program" as any of the following programs:

   a) The Forestry Assistance Program.

   b) The Comprehensive Wildfire Mitigation Program.

   c) The Wildfire Prevention Grants Program.

   d) The local assistance grant program for fire prevention and home hardening education activities.

   e) The federal Building Resilient Infrastructure and Communities program.

   f) The federal Hazard Mitigation Grant Program.

   g) The federal Fire Management Assistance Grant Program.

   h) The federal Community Wildfire Defense Grant program.

2) Requires, on or before July 1, 2024, and every July 1 thereafter, the Task Force to compile and post on its internet website all of the following information for each program, for each fiscal year in which the Legislature appropriated funding:

   a) The amount of funding allocated from the program.

   b) The list of recipients and subrecipients that received an allocation from the program, including the location of the project.

   c) The amount of funding that has been encumbered by each recipient.

   d) A brief description of the project, including the location and the proposed schedule for the project's completion.

   e) A brief description of the anticipated benefits of the project, which may include benefits for fire prevention and mitigation, habitat, forest resiliency, climate resiliency, public safety, or protection of important natural resources, including water quality and water supply.

FISCAL EFFECT: Unknown.

COMMENTS:

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

> California has invested significant time and resources developing and implementing a comprehensive approach to wildfire related disaster preparedness, mitigation, and resilience. The California Wildfire and Forest Resilience Action Plan (Action Plan) lays out a detailed framework and associated implementation strategy and expenditure plan for establishing healthy and resilient forests and communities that can withstand and adapt to wildfire, drought, and climate change.
>
> Implementation of the Action Plan requires coordination amongst state agencies and departments, the State Legislature, hundreds of stakeholders, and communities across California. The Task Force has oversight and coordination responsibility to ensure the Action Plan is implemented.
>
> Implementation of the Action Plan also requires significant fiscal resources to undertake projects to improve forest health and resilience, create fuel breaks, harden homes and communities, and build resilient lifeline infrastructure to withstand wildfire disasters when they do occur. Since FY 2020-21, the State has appropriated approximately $2.8 billion for programs to support the State's wildfire and forest resilience goals and objectives.
>
> While wildfire and forest resilience projects have been and continue to be awarded to communities throughout the state, the data is reported piecemeal across various state agencies, departments, boards, and offices. Further, the reporting is not adequate to understand that status of projects and programs and how the investments are making a collective difference in communities. Understanding the status of current programs is vital information in order to target and maximize additional investments in fire prone areas.

2) **Wildfire prevention**. Wildfires have been growing in size, duration, and destructivity over the past 20 years. Growing wildfire risk is due to accumulating fuels, a warming climate, and expanding development in the wildland-urban interface. The 2020 fire season broke numerous records. Five of California's six largest fires in modern history burned at the same time, destroying thousands of buildings, forcing hundreds of thousands of people to flee their homes, and exposing millions of residents to dangerously unhealthy air. Managing forest health and efforts to restrict fire spread is vital to wildfire prevention. The 2021-2022 Budget Act committed $2.8 billion over four years to continue strengthening forest and wildfire resilience statewide. The Governor's January 10 budget proposed maintaining $5.7 billion (97%) of that funding.

3) **California Wildfire and Forest Resilience Task Force**. The Task Force is a collaborative effort to align federal, state, local, public and private, and tribal entities together to support projects tailored for regional fire prevention needs.

   The Task Force's *January 2021 California Wildfire and Forest Resilience Action Plan* (Action Plan) is the initial five-year plan for implementing the Agreement for Shared

Stewardship of California's Forest and Rangelands (Shared Stewardship Agreement) with the United States Forest Service (USFS)**,** coordinating the state's forestry efforts with other federal, local, tribal, regional, and private organizations. The Action Plan details goals to treat 500,000 acres annually by 2025 through the Shared Stewardship Agreement; to underscore building resilience in threatened communities through adaptive strategies, such as hardening homes, buildings, and infrastructure, and increasing defensible space and fuel breaks; forest thinning and prescribed fire; and, move innovation in monitoring and research.

The Action Plan aligns with the $2.8 billion in investments in last fiscal year's budget to combat wildfire risk and improve the health of forested landscapes. The Task Force's expenditure plan[i] identifies the breakdown of the funding across the various wildfire prevention programs, including those included in this bill.

4) **Fire prevention financing programs**. This bill requires the Task Force to compile and post information on legislative appropriations for the following programs. It is important to note that these programs are not an exhaustive list of programs appropriating taxpayer dollars for forest health and wildfire prevention in California.

- Forestry assistance program. Under this program, CAL FIRE works with private landowners, particularly smaller nonindustrial landowners, to upgrade the management of their lands, and improve both the productivity of the land and the degree of protection and enhancement of the forest resource system as a whole.

- Comprehensive wildfire mitigation program. Enacted pursuant to AB 38 (Wood, Chapter 391, Statutes of 2019), this program requires the Natural Resources Agency, in consultation with the Office of the State Fire Marshal and the Task Force, to review the regional capacity of each county that contains a very high fire hazard severity zone to improve forest health, fire resilience, and safety. Cal OES can enter into a joint powers agreement with CAL FIRE to administer a comprehensive wildfire mitigation and assistance program to encourage cost-effective structure hardening and facilitate vegetation management.

- Wildfire Prevention Grants. CAL FIRE provides grants for local projects in and near fire threatened communities that focus on increasing the protection of people, structures, and communities. Qualified activities include hazardous fuels reduction, wildfire prevention planning and wildfire prevention education with an emphasis on improving public health and safety while reducing greenhouse gas emissions. CAL FIRE considers the wildfire hazards and risk of an area, the geographic balance of projects, and whether the project is complementary to other wildfire prevention or forest health activities when awarding grants.

- Local assistance grant program. This program is fire prevention and home hardening education activities. Groups eligible for grants include local agencies, resource conservation districts, fire safe councils, the California Conservation Corps, certified community conservation corps, University of California Cooperative Extension, CaliforniaVolunteers, Native American tribes, and qualified nonprofit organizations.

- Federal Building Resilient Infrastructure and Communities (BRIC). This grant program provides funds annually for hazard mitigation planning and projects to reduce risk of

damage before a disaster. Funding is available in federal funding for eligible FEMA BRIC projects and project scoping activities.

- Federal Hazard Mitigation Grant Program (HGMP). FEMA provides hazard mitigation funding assistance for eligible mitigation measures that reduce disaster losses. "Hazard mitigation" is any sustainable action that reduces or eliminates long-term risk to people and property from future disasters. The funds are administered by Cal OES.

- Federal Fire Management Assistance Grant Program (FMAG). Administered by FEMA, grants are available to states, local, and tribal governments, for the mitigation, management, and control of fires on publicly or privately owned forests or grasslands, which threaten such destruction as would constitute a major disaster.

5) **Keeping tabs on how the money is spent.** The Pew Charitable Trusts November 2022 report, *Wildfires: Burning Through State Budgets,* made the following recommendations for policymakers who are tasked with managing the growing risks and spending associated with wildfire:

   - States should evaluate and strengthen current budgeting practices to account for growing risk. By comparing actual spending versus expected spending, assessing the threat of future fires, and implementing other tools, states can more accurately understand how much to budget for wildfire management, including mitigation.

   - States should explore opportunities to better track and share data on wildfire spending. Wildfire spending data should be made more accessible, transparent, and comprehensive across all levels of government, which could improve intergovernmental coordination and provide policymakers with evidence to more strategically allocate resources.

   The author argues that understanding the status of current programs is vital information to target existing and future investments. Data is also needed to understand the impacts previous investments achieved and to make program modifications in improved outcomes, to the extent possible.

   Grant reporting is currently required for all of the aforementioned grant programs, but that information is siloed by program and by agency, and there is not a place where all spending on wildfire prevention activities can be tracked by project type or geographic implementation.

6) **Tracking state funding**. With a $22 billion budget shortfall, and multi-billion dollar deficits in the foreseeable future, tracking taxpayer dollars to ensure they are spent as efficiently and effectively as possible is both pragmatic and responsible. In addition, with the impacts of climate change exacerbating drought and increasing unpredictability in weather patterns, tracking the efficacy of investments in forest health and fire risk prevention will be an ongoing priority.

   In 2017, the Legislature approved SB 1 (Bealle, Chapter 5, Statutes of 2017), also known as the Road Repair and Accountability Act of 2017, which provided funding for local jurisdictions to fix and maintain roads and bridges through transportation related taxes and fees. SB 1 requires the California Transportation Commission (CTC) to track the

performance of all SB 1 funded programs under its purview and report to the public how well recipients of SB 1 funds are delivering on promises made to the taxpayers. As a result, CTC has tracked $17.36 billion in gas tax expenditures across more than 9,000 transportation projects. CTC's website tracking the expenditures includes details on the project name, implementing agency, project description, cost, fund type, project status, federal and state districts, geography, and date when the project info was updated.

The CTC's ability to detail information for more than $17 billion provides a model for the Task Force to map the state's $2.7+ billion investments in wildfire prevention.

7) **This bill**. AB 788 require the Task Force to create and maintain a comprehensive data portal, including a searchable data base of projects by city, county, and legislative district, on wildfire and forest resilience programs, projects, and expenditures.

   The author's intent is to help the state fully understand how California's investments are influencing the state's overall wildfire risk, where resources have been directed, what the outcomes have been, and where resources need to be directed in future budgets and programs. The sheer magnitude of investments needed to increase the pace and scale of wildfire and forest resilience activities requires an accurate understanding of where investments have been made and where needs remain.

   Last May, the Task Force announced the Forest & Wildland Stewardship Interagency Tracking System on its website to report on the status of wildfire and forest resilience projects. The goal is to provide transparency and accountability for state and federal land management efforts toward the acreage targets stated in the Agreement for Shared Stewardship and other documents, including strategy documents created by the Task Force. Data will be collected on the project, the treatment, and the activity. The expected product is a spatial database that can provide both summary information on statewide activity and GIS maps capable of showing local implementation, for use by policymakers, land managers, scientists, and the public.

   That effort would grease the skids to implement this bill, should it be enacted, and build a system for tracking wildfire prevention investments much like the one for SB 1 funds.

8) **Related legislation.** AB 388 (Connolly) would, among other things, require the director of CAL FIRE to post on its internet website a description, amount, and outcome of each regional block grant or fund transfer to implement projects that contribute to the achievement of the Action Plan's goals. AB 388 is scheduled to be heard in the Assembly Natural Resources Committee on March 27.

REGISTERED SUPPORT / OPPOSITION:

Support

American Property Casualty Insurance Association
Buildstrong Coalition
Humboldt and Mendocino Redwood Companies
Personal Insurance Federation of California

Opposition

None on file.

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

[i] Expenditure Plan – California Wildfire & Forest Resilience (wildfiretaskforce.org)

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 849 (Garcia) – As Amended March 15, 2023

SUBJECT: Community emissions reduction programs

SUMMARY: Requires a state agency to implement and enforce measures assigned to it in a Community Emissions Reduction Program (CERP) adopted by a local air district and the Air Resources Board (ARB) pursuant to AB 617 (Cristina Garcia), Chapter 136, Statutes of 2017. Provides that ARB grants to community-based organizations may include allocating funds to AB 617 community steering committees to serve as a budget for administrative items, to the extent the Legislature appropriates funds specifically for this purpose.

EXISTING LAW, pursuant to Health and Safety Code § 44391.2:

1) Requires a statewide emissions reduction strategy targeting pollution-burdened communities, as follows:

    a) Requires ARB to prepare a statewide strategy to reduce emissions of toxic air contaminants (TACs) and criteria pollutants in communities affected by a high cumulative exposure burden, and update the strategy at least once every five years.

    b) Requires the strategy to include criteria for development of CERPs, including:

        i) An assessment and identification of communities with high cumulative exposure burdens for TACs and criteria air pollutants, prioritizing disadvantaged communities (DACs) and sensitive receptor locations based on one or more of the following: best available modeling information, existing air quality monitoring information, existing public health data based on consultation with Office of Environmental Health Hazard Assessment (OEHHA), and the results of community air monitoring systems (CAMS).

        ii) A methodology for assessing and identifying the contributing sources or categories of sources, including, but not limited to, stationary and mobile sources, and an estimate of their relative contribution to elevated exposure to air pollution in impacted communities.

        iii) An assessment of whether a district should update and implement the risk reduction audit and emissions reduction plan for any facility to achieve emission reductions commensurate with its relative contribution, if the facility's emissions either cause or significantly contribute to a material impact on a sensitive receptor location or DAC.

        iv) An assessment of the existing and available measures for reducing emissions from the contributing sources or categories of sources.

2) Requires the adoption of CERPs in communities designated by ARB, as follows:

a) Requires ARB to select locations around the state for preparation of CERPs, concurrent with the statewide strategy, with additional locations selected annually thereafter, as appropriate.

b) Requires a district to adopt a CERP to achieve emissions reductions using cost-effective measures identified by ARB.

c) Requires the CERP to be consistent with ARB's statewide strategy and include emissions reduction targets, specific reduction measures, an implementation schedule, and an enforcement plan.

d) Requires the CERP to be submitted to ARB for review and approval within 60 days. Requires CERPs rejected by ARB to be resubmitted within 30 days. If a CERP is not approvable by ARB, requires ARB to initiate a public process to discuss options for achievement of an approvable CERP. Requires ARB to concurrently develop and implement the applicable mobile source elements to commence achievement of emission reductions.

e) Requires CERPs to result in emissions reductions in the community, based on monitoring and other data.

f) Requires ARB and the district each to be responsible for measures consistent with their respective authorities.

g) Requires districts to prepare an annual report summarizing the results and actions taken to further reduce emissions pursuant to a CERP.

h) Requires compliance with the CERP to be enforceable by the district and ARB, as applicable.

i) Requires ARB to provide grants to community-based organizations for technical assistance and to support participation in implementation of CERPs and CAMS.

THIS BILL:

1) Requires a relevant state agency to implement and enforce measures assigned to it in a CERP, unless the agency finds that those measures are infeasible at a public meeting of its governing body, or, for an agency without a governing body, if the highest ranking officer of the agency finds and declares in writing, after allowing a 30-day opportunity for public comment, that the measures are infeasible.

2) Provides that grants provided by ARB for technical assistance and to support participation in implementation of CERPs and CAMS may include providing the AB 617 community steering committee an allocation of funds to serve as a budget for administrative items, to the extent the Legislature appropriates funds specifically for this purpose, including, but not limited to, translation services, meeting venue, meeting coordination, training, and stipends, as authorized by the air district, for members of the committee.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Background**. Existing law establishes ARB as the air pollution control agency in California and requires ARB, among other things, to control emissions from a wide array of mobile sources and coordinate with local air districts to control emissions from stationary sources in order to implement the Clean Air Act. Air districts are required to adopt and enforce rules and regulations to achieve and maintain the state and federal air quality standards in all areas affected by emission sources under their jurisdiction, and to enforce applicable provisions of state and federal law.

   AB 617 requires ARB to select pollution-burdened communities around the state each year for preparation of CERPs and requires the relevant air district to adopt a CERP to achieve emissions reductions. In recognition of the division of authority between ARB for mobile sources and air districts for stationary sources, AB 617 requires ARB and the district to each to be responsible for measures consistent with their respective authorities.

   In the implementation of AB 617, and the development of CERPs through community steering committees, issues related to air pollution sources and exposure have arisen that may be outside the jurisdiction of the air districts or ARB. This may include local land use practices that increase exposure to air pollution, practices under the authority of another state agency, such as pesticide application or highway construction, and sources of air pollution regulated primarily by the federal government, such as rail and aviation.

   This bill intends to address CERP measures under the jurisdiction of a state agency by requiring the relevant agency to implement and enforce a measure, unless the agency affirmatively finds the measure is infeasible.

2) **Author's statement**:

   > Since the passage of AB 617, several communities throughout the state have been able to benefit from participating in this community air protection program. Community participation in this program helps contribute to the reduction of greenhouse gas emissions throughout the state. It is exceptionally exciting to see the positive impact the AB 617 program has had and the community collaboration that has resulted from it. Now it is time to make necessary changes to the program that will allow collaboration between the air districts and relevant state agencies for the purpose of continuing the reduction of greenhouse gas emissions and improving air quality throughout the state.

3) **To what extent can another state agency implement and enforce a measure adopted by an air district and ARB through the CERP process**? This bill proposes a novel process, where a state agency could be required to implement and enforce a measure adopted by an air district and ARB through the CERP process. "Measure" is not defined, but if the measure is regulatory in nature, presumably the state agency would have to make its own determinations through its rulemaking process before it could enforce the measure.

4) **Technical suggestions**. To be clear that the bill adds measures that are beyond the authority of ARB or air districts, and does not dilute the existing responsibilities of ARB or the air districts, *the author and the committee may wish to consider* amending the relevant provisions to clarify that other state agencies would only be assigned a measure if the measure is outside of the authorities of air districts and ARB, as follows:

(6) In implementing a community emissions reduction program, the district~~,~~ *and* the state board~~, and other relevant state agencies~~ shall be responsible for measures consistent with their respective authorities. *If the community emissions reduction program adopted by the district and the state board includes a measure that is not within the authority of the district or the state board, the state board may assign the measure to the state agency with authority over the measure.* A ~~relevant~~ state agency shall implement the ~~measures~~ *measure* assigned to it ~~as a part of the community emissions reduction program~~ unless that agency finds that ~~those measures are~~ *the measure is* infeasible at a public meeting of its governing body, or, for an agency without a governing body, if the highest ranking officer of the agency finds and declares in writing, after allowing a 30-day opportunity for public comment, that the ~~measures are~~ *measure is* infeasible.

(8) Compliance with a community emissions reduction program prepared pursuant to this section, including its implementation, shall be enforceable by the district, state board, and other relevant state agencies, as applicable. A ~~relevant~~ state agency *to which a measure is assigned pursuant to paragraph (6)* shall enforce the ~~measures assigned to it as a part of the community emissions reduction program~~ *measure* unless that agency finds that ~~those measures are~~ *the measure is* infeasible at a public meeting of its governing body, or, for an agency without a governing body, if the highest ranking officer of the agency finds and declares in writing, after allowing a 30-day opportunity for public comment, that the ~~measures are~~ *measure is* infeasible.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Air Quality Management District
San Diego County Air Pollution Control District
South Coast Air Quality Management District

Opposition

Western States Petroleum Association

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 863 (Aguiar-Curry) – As Amended March 21, 2023

SUBJECT: Carpet recycling: carpet stewardship organizations: fines: succession: procedure

SUMMARY: Increases the penalties for violations of the state's carpet stewardship law and specifies that a carpet stewardship organization that violates any provision of the carpet stewardship law three or more times is ineligible to act as the agent for carpet manufacturers in the state.

EXISTING LAW: Pursuant to the state's carpet stewardship law (Public Resources Code § 42970, et seq.):

1) Requires manufacturers of carpets sold in this state, individually or through a carpet stewardship organization, to submit a carpet stewardship plan to the California Department of Resources Recycling and Recovery (CalRecycle) that will achieve a 24% recycling rate for carpet by January 1, 2020, quantifiable five-year and annual goals for how the recycling rate will be achieved, and how it will:

    a) Increase the weight of postconsumer carpet that is recycled and reduce the disposal of postconsumer carpet;

    b) Increase the collection convenience for the recycling of postconsumer carpet and increase the collection of postconsumer carpet for recycling;

    c) Increase processor capacity, including in California; and,

    d) Increase the recyclability of carpet.

2) Requires carpet manufacturers, individually or through a carpet stewardship organization, to submit an annual report to CalRecycle describing their activities to achieve the purposes of the program, as specified.

3) Requires an assessment fee for each yard of carpet sold in the state, based on the cost of recycling. The fee currently ranges from $0.33 to $0.48 per square yard for carpet containing 10% or more recycled content and $0.35 to $0.50 per square yard for carpet containing less than 10% recycled content. On April 1, 2023, the fee is expected to increase to between $0.56 to $0.71 per square yard for carpet containing 10% or more recycled content and between $0.58 to $0.73 per square yard of carpet containing less than 10% recycled content.

4) Requires CalRecycle to form an advisory committee to make recommendations on stewardship plans.

5) Establishes a state goal to achieve a 24% recycling rate for carpet by 2020 and to meet or exceed that rate thereafter. Authorizes CalRecycle to adjust the rate at least every three years

based on specified information.

6) Establishes a process when a carpet stewardship organization or a stewardship plan are terminated or revoked.

7) Requires CalRecycle to enforce the provisions of the program. Establishes civil penalties of up to $5,000 per day, or $10,000 per day for violations that are intentional, knowing, or negligent.

8) Establishes the Carpet Stewardship Account and the Carpet Stewardship Penalty Subaccount within the Integrated Waste Management Fund and directs specified fees and penalties into the accounts for specified purposes.

THIS BILL:

1) Requires, beginning January 1, 2024, a carpet stewardship organization, as part of its carpet stewardship plan, to:

   a) Ensure that at least 95% of the assessments collected be expended for activities to carry out the carpet stewardship plan within California; and,

   b) Ensure that at least 10% of the assessments collected be expended on grants to apprenticeship programs approved by the Chief of the Division of Apprenticeship Standards for training apprentice and journey-level carpet installers in proper carpet recycling practices.

2) Increases the penalty amounts for violations of the state's carpet stewardship law to $10,000 per day, or $50,000 per day for violations that are intentional, knowing, or negligent.

3) Specifies that a carpet stewardship organization that violations the carpet stewardship law three or more times is ineligible to act as an agent on behalf of manufacturers to design, submit, and administer a carpet stewardship plan.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement:**

   Since July 2011, California consumers have paid a carpet stewardship assessment fee when purchasing carpet sold in California. This fee funds a statewide carpet recycling program known as the Carpet America Recovery Effort (CARE), which is a Producer Responsibility Organization (PRO) designed and implemented by carpet manufacturers with CalRecycle oversight. However, CARE has repeatedly failed to administer the program effectively and equitably and has required oversight and repeated enforcement by CalRecycle. Recyclers and collectors have left the state or gone out of business due to a lack of feedstock, while carpet is still being landfilled. This bill will improve accountability for CARE or any other consumer-funded carpet recycling

program by increasing civil penalties for violating relevant laws and making repeat offenders ineligible to run this program.

2) **Extended Producer Responsibility (EPR) Programs**. According to CalRecycle, EPR is a strategy that places shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of on the general public and local governments, with oversight and enforcement provided by a governmental agency. This approach provides flexibility for manufacturers, based on their expertise in designing products and the systems that bring these products to market, to design systems to capture those products at the end-of-life to meet statutory goals. Currently there are four statewide EPR programs: paint, carpet, mattresses, and pharmaceutical and sharps waste. Additionally, last year the Legislature adopted an expansive EPR program for single-use packaging and food ware that will be implemented over the next several years.

3) **Recycling Carpet**. Discarded carpet is one of the most prevalent waste materials in California landfills, comprising about 1.6% of waste by volume disposed of in California in 2018. Most carpet is made from nylon and other plastics derived from fossil fuels. Carpet is difficult to recover plastics from due to the multiple materials bound together and is designed for durability and longevity; however, numerous products can be manufactured from recycled carpet, including carpet backing and backing components, carpet fiber, carpet underlayment, plastics and engineered materials, and erosion control products.

4) **California's carpet recycling program**. California's carpet stewardship program was created by AB 2398 (Perez), Chapter 681, Statutes of 2010. As an EPR program, manufacturers (either individually or through their stewardship organization) are required to design and implement their own stewardship program. This means there is a stewardship organization that prepares and implements a plan to reach certain goals, finances and distributes funds to support the stewardship program, and reports to CalRecycle on their progress. CalRecycle's role in the carpet stewardship program is to review and approve plans, check progress, and support industry by providing oversight and enforcement to ensure a level playing field among carpet manufacturers. Other service providers participate in the management system as negotiated with the stewardship organization.

5) **Carpet America Recovery Effort (CARE)**. CARE is a third-party, nonprofit carpet stewardship organization based in Georgia. AB 2398 established CARE as the sole carpet stewardship organization until April 1, 2015, and after that date, permits an organization to submit a stewardship plan to CalRecycle for approval. Currently, CARE is the only carpet stewardship organization in California.

6) **Carpet stewardship plans**. CARE's first stewardship plan covered years 2011-2016 and established the initial assessments at $0.05, increasing to $0.10 in 2015 and $0.20 in 2016. In October of 2016, CARE submitted a plan for 2017-2021 that was disapproved by CalRecycle. Instead, a temporary plan was approved for 120 days that increased the assessment to $0.25. CARE's subsequent plan was also rejected by CalRecycle for failing to meet statutory requirements. CalRecycle staff prepared a draft plan to help CARE develop a compliant plan, which was completed in October of 2017. In order to grant CARE time to comply, CalRecycle authorized CARE to continue to operate under the 2011-2016 plan under conditions set by an enforcement plan. The enforcement plan also required CARE to submit an updated plan by March 16, 2018.

CARE submitted the updated plan on time; however, this plan was again disapproved by CalRecycle for failing to meet statutory requirements. In August, CARE submitted a plan with additional revisions, followed by additional revisions in September of 2018. This plan was conditionally approved by CalRecycle, which required CARE to address a number of recommendations relating to economic analysis, consumer convenience, market development, and source reduction. In December 2018, CARE submitted an addendum to the plan, which was approved by CalRecycle in February 2019 and covered years 2018-2022.

In September 2022, CARE submitted a plan to cover 2023-2027. CalRecycle disapproved the plan in November 2022 because it failed to meet a number of statutory requirements and directed CARE to submit a revised plan within 60 days that includes: quantifiable five-year and annual goals to expand and incentivize markets for postconsumer carpet; quantifiable five-year and annual goals to increase processor capacity; quantifiable five-year and annual goals to increase the recyclability of carpet; the baseline from which each goal is measured; a methodology for estimating the amount of carpet available for collection in California; and, how attainment of the goals will be measured. CARE's revised plan was submitted in January 2023. On March 6th, CalRecycle conditionally approved the plan, but required CARE to resubmit an updated plan within 60 days that addresses conditions identified by CalRecycle. The conditions include, in part, updating the program goals, including a description of how attainment of specified goals will be measured, clarifying that CARE will use the appropriate census data, updating the contingency plan to make it implementable, and updating a number of financial provisions to ensure uninterrupted implementation of the plan and providing quarterly updates to CalRecycle. Until the resubmitted plan is approved, CalRecycle intends to continue to carry out the activities of the program pursuant to the contingency plan.

7) **Enforcement actions against CARE**. On March 10, 2017, separate from its consideration of the proposed 2017-2021 stewardship plan, CalRecycle began an enforcement proceeding against CARE for failing to meet the requirement that the carpet stewardship organization achieve "continuous and meaningful improvement in the rates of recycling and diversion of postconsumer carpet subject to its stewardship plan and in meeting the other goals included in the organization's plan." In spite of the significant amount of money collected by CARE from California consumers, CalRecycle found that CARE did not meet these requirements in 2013, 2014, 2015, and 2016. Finally, on March 30, 2021, CARE and CalRecycle reached a settlement that required CARE to pay $1.175 million in penalties for years 2013-2016.

As noted above, CARE continues to operate in California without an approved stewardship plan and in violation of the carpet stewardship law. CalRecycle is currently attempting to gather the information necessary to implement the statutorily required escrow account and contingency plan to ensure that California's carpet stewardship program continues to operate and that California's carpet recycling infrastructure and California-based carpet recycling businesses are funded. However, according to CalRecycle at its February 2023 public meeting, CARE failed to comply with the timelines and requirements of their contingency plan, including transferring funds to the escrow account and turning over necessary documentation to CalRecycle.

8) **This bill.** This bill increases the penalties for violations of the state's carpet stewardship law, which is intended to provide the incentive necessary to ensure that CARE, and any future stewardship organizations, comply with the program's requirements. Additionally, this bill would make a stewardship organization that violates the law three or more times ineligible to act as an agent on behalf of carpet manufacturers in the state. This provision would require CalRecycle, under the contingency plan, to administer the carpet stewardship program until a new stewardship organization is formed. This change is intended to ensure that California-based carpet recycling businesses and infrastructure are funded and remain open and operational.

9) **Previous legislation:**

AB 729 (Chu, Chapter 680, Statutes of 2019) revised the carpet stewardship law to, among other things, require the stewardship plan include a funding mechanism with differential assessments, require a contingency plan in the absence of an approved plan by CalRecycle, and increase the administrative penalties from $1,000 per day to $5,000 per day.

AB 1158 (Chu, Chapter 794, Statutes of 2017) created an advisory committee to make recommendations on carpet stewardship plans. Established a minimum carpet recycling rate of 24% by 2020 and requires CalRecycle to establish a minimum percentage beginning January 1, 2023.

AB 2398 (Pérez, Chapter 681, Statutes of 2010) established the carpet stewardship law, which requires carpet manufacturers to implement stewardship programs to increase the recycling rate of carpet in the state and established an assessment per unit of carpet sold in the state to pay for the costs of the stewardship plans.

10) **Suggested amendments**.

The *committee may wish to amend the bill* to authorize CalRecycle to require, by regulation, producers or the carpet stewardship organization to achieve the recycling rates and meet program requirements, if it determines that a producer or the carpet stewardship organization has not achieved any of the requirements of the program in order to allow CalRecycle to take the necessary actions to ensure that the carpet stewardship organization and carpet producers comply with the state's carpet stewardship law.

The *committee may wish to amend the bill* to clarify that the carpet recycling practices that apprentice and journey-level carpet installers are trained in include proper carpet installation and removal practices to maximize the recyclability of carpet.

REGISTERED SUPPORT / OPPOSITION:

Support

Aquafil Carpet Recycling
California Product Stewardship Council
Californians Against Waste

Circular Polymers
Commercial Flooring Solutions by ACR
Commercial Interior Resources
Concrete Polish Surface
Continental Flooring Inc.
Donald M. Hoover Company
Dream Floor Covering Inc.
Elias Flooring Inc.
Elite Performance Flooring Inc.
Empire Floor Covering, Inc.
Environmental Working Group
Floor Covering Association of Southern California, INC.
Floor It, INC.
Painters & Allied Trades DC 36
JJJ Floor Covering, Inc.
KYA
Lawrence W. Rosine Co.
League of California Cities
Marin Sanitary Service
Mike's Custom Flooring, Inc.
National Stewardship Action Council (sponsor)
New Goal Landscaping
Next Generation Floor Covering Inc.
Ohno Construction Company
Plastic Pollution Coalition
Progressive Surface Solutions
Reliable Floor Covering, Inc.
Republic Services Inc.
RethinkWaste
Rod-West
Signature Flooring, Inc.
The Rouse Company
WB Flooring Solutions, Inc.
Waste Management
XT Green, Inc.
Zero Waste Sonoma

Opposition

None on file

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 882 (Davies) – As Introduced February 14, 2023

SUBJECT: Coastal resources: Climate Ready Program: State Coastal Conservancy

SUMMARY: Requires the State Coastal Conservancy (Conservancy) to prioritize the review of applications for projects that use natural infrastructure in coastal communities or that protect natural resources in the Climate Ready Program and to process those applications no later than 45 days from the date the Conservancy receives the application.

EXISTING LAW:

1) Establishes the Conservancy and provides the responsibility for implementing a program of agricultural protection, area restoration, and resource enhancement in the coastal zone within policies and guidelines established pursuant to the Coastal Act. (Public Resources Code (PRC) § 31000, et seq.)

2) Establishes the Climate Ready Program, administered by the Conservancy, in order to address the impacts and potential impacts of climate change on resources within the conservancy's jurisdiction. (PRC § 31113(a))

3) Requires the Conservancy, when allocating specified funds, to prioritize projects that use natural infrastructure in coastal communities to help adapt to climate change and prioritizing projects that provide multiple public benefits, among other things. (PRC § 31113(d)(1))

FISCAL EFFECT: Unknown.

COMMENTS:

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

> California's coastal communities are at a cross-roads. It doesn't matter if it is sea-level rise or coastal erosion, our ecological systems and way of life are under assault from climate change. Communities up and down our coast need our help to ensure they can protect these beautiful habitats and tourist attractions. AB 882 is a common-sense measure to ensure that when a locality applies for a Climate Ready Grant, they are given an answer in a timely manner so they can accurately plan for how either use the finds or search for other opportunities, both at the state and federal level.

2) **Climate Ready Program**. The Conservancy's Climate Ready Program is helping natural resources and human communities along California's coast and San Francisco Bay adapt to the impacts of climate change and working to capture greenhouse gas (GHG) emissions from the atmosphere through the conservation of natural and working lands.

   The program provides grants funded through the Greenhouse Gas Reduction Fund for projects that support multi-benefit projects that use natural systems to enhance resilience to

climate impacts. The most recent round of grants (2019) focused on managed retreat and natural shoreline infrastructure strategies to increase California's resiliency to sea level rise.

Under the program, grants are awarded through a rolling pre-application solicitation. The application is a two-step process: the first step in the application process is to submit a pre-application. Applicants are advised to expect a 60-day turnaround time for Conservancy response.

If a pre-application meets the Conservancy's eligibility criteria and there is available Conservancy funding for the project, applicants will be invited to submit a full application. Full review of the Conservancy then takes another 60 days.

The timeline to award, grant, and fund expenditure will vary from project to project based on the Conservancy's meeting schedule and prioritization of time sensitive projects. In general, this process can take from 3-6 months. For acquisitions, this timeline also depends on the complexity of the acquisition and the number of documents and agreements that we will need to review and approve. For time-sensitive applications, the Conservancy will discuss the timeline during the application review with the project applicant to determine if we will be able to make the necessary timeline.

3) **This bill**. AB 882 would require the Conservancy to prioritize the review of applications for projects that use natural infrastructure in coastal communities to help adapt to climate change, and projects that provide multiple public benefits and to process those applications no later than 45 days from the date the Conservancy receives the application.

   The state has identified "Cutting Green Tape" as a signature initiative to increase the pace and scale of environmental restoration. Complex and overlapping permitting processes can result in fewer and smaller actions being taken at a slower pace and a greater expense. In the November 2020 stakeholder-coordinated report issued by California Landscape Stewardship Network, *Cutting Green Tape: Regulatory Efficiencies for a Resilient Environment*, **s**ometimes a project that only takes weeks to implement can take years to permit. Much like the familiar term, "red tape," "green tape" represents the extra time, money, and effort required to get environmentally beneficial work done because of inefficiencies in our current systems.

   The intent of AB 882 appears to be in line with motivation to expedite climate resiliency work.

   However, the 45-day requirement doesn't explicitly apply to the pre-application review or the full application review, so it's unclear how the Conservancy would implement the 45-day requirement in the bill.

4) **Budget constraints**. Recent budgets have appropriated $144 million to the Conservancy to support sea-level rise adaptation projects through its Climate Ready Program. However, faced with a $22.5 billion budget deficit for fiscal year 2023-2024, Governor Newsom proposed significant cuts to coastal programs, including $561 million in reductions for coastal resilience. That includes a 65% reduction ($325 million) over 2022-23 and 2023-24 for coastal climate change investments. Budget deficits are projected over the next several fiscal years.

These budget cuts could impact the dedicated staff available to reviewing and processing applications under the Climate Ready Program, potentially making the proposed 45-day turnaround challenging. The author may wish to work with the Conservancy to ensure the 45-day timeframe will be workable.

5) **Advance payments**. Last year, the Budget Act [AB 156 (Committee on Budget), Chapter 569, Statutes of 2022] provided authority to state agencies to disperse advance payments to grant recipients to help the grantees start work on a project instead of waiting for the grant funding to come in whole or using their own funds until the state pays them back.

   Agencies are required to prioritize recipients and projects serving disadvantaged, low-income, and under-resourced communities or organizations with modest reserves and potential cashflow problems, and ensure the advance payment to the recipient entity does not to exceed 25 percent of the total grant amount awarded to that recipient entity.

   That code section provides that a state agency may use its advance payment process "only if the program administered by the administering state agency expressly authorizes the use of this section," and amended various agencies' governing statutes to explicitly authorize use of advance payments. AB 156 did not, however, amend Public Resources Code Division 21 to authorize the Conservancy to use that authority, and nothing else in Division 21 provides such express authorization.

6) **Committee amendments**. To accomplish the author's goal of supporting climate ready project grantees without truncating the Conservancy's timeline for thoroughly reviewing a grant application, the Committee may wish to consider amending this bill to strike the current contents and replace with explicit authority for the Conservancy to provide advance payments under its grant programs as follows:

   31123.

   (a) The conservancy may authorize advance payments on a contract or grant awarded under this division in accordance with Section 11019.1 of the Government Code.

   (b) This section shall remain in effect only until the date that Section 11019.1 of the Government Code is repealed, and as of that date is repealed.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 909 (Hoover) – As Introduced February 14, 2023

SUBJECT: Solid Waste Disposal and Codisposal Site Cleanup Program

SUMMARY: Requires the Department of Resources Recycling and Recovery (CalRecycle) to initiate a program to include the cleanup of hazardous waste and household hazardous waste under the Solid Waste Disposal and Codisoposal Site Cleanup Program (Program).

EXISTING LAW:

1) Establishes the Program (Public Resources Code § 48020 – 48028), which:

    a) Requires CalRecycle to develop a program for the cleanup of solid waste disposal and for the cleanup of solid waste at codisposal sites where a responsible party cannot be identified or is unwilling or unable to pay for the remediation, and where cleanup is needed to protect public health and safety or the environment.

    b) Defines "codisposal site" as a hazardous substance release site where the disposal of hazardous substances, hazardous waste, and solid waste has occurred.

    c) Establishes the Solid Waste Disposal Site Trust Fund (Trust Fund) comprised of funds appropriated by the Legislature, interest earned, and any cost recovery from responsible parties. The Trust Fund balance at each July 1st may not exceed $30 million.

2) Defines "hazardous waste" as a waste that meets the criteria for hazardous waste adopted by the Department of Toxic Substances Control (DTSC). Specifies that the criteria for identifying hazardous waste. (Health and Safety Code § 25117 and 25141)

3) Defines "household hazardous waste" as hazardous waste generated incidental to owning or maintaining a place of residence. Specifies that household hazardous waste does not include waste generated in the course of operating a business at a residence. (Health and Safety Code § 25218.1)

THIS BILL:

1) Requires CalRecycle to, upon appropriation, initiate a program to collect and properly manage illegally disposed hazardous waste and household hazardous waste, regardless of whether they were codisposed with nonhazardous waste.

2) Requires that the collection, transportation, and disposal of hazardous waste and household hazardous waste be performed in accordance with applicable law.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

> This is an important measure that will aid local governments and private landowners in cleaning up their communities and ensuring that hazardous waste is properly disposed of. Specifically, it will expand CalRecycle's existing Sold Waste Disposal Cleanup Program to help fund proper disposal of illegally dumped hazardous waste and household hazardous waste, including batteries, cleaners, electronic wastes, paints, pesticides, used oil, etc. By providing local governments with proper reimbursement of hazardous waste, this measure will further protect public health and safety in the environment.

2) **Illegal dumping**. Illegal dumping is a frequent problem statewide. There are generally three types of illegal dumping: littering small amounts of waste left in the open or in public areas; illegal dumping of larger amounts of waste at one location; and, illegal disposal sites on which large amounts of material are dumped on property that does not have a valid solid waste facilities permit. Illegal dumping can grow to an illegal disposal site if left unabated. Illegally disposed waste poses social, environmental, public health, and economic impacts to the communities in which it occurs. The responsibility, and cost, for cleaning up these sites lies with local governments, who spend millions cleaning up illegal dump sites. Preventing future dumping is difficult; signs and fencing are often used to try to discourage future dumping.

   Illegal disposal sites are not limited to solid waste. Most sites contain a mix of wastes and include solid waste, like mattresses, papers, and single-use packaging, and hazardous wastes, like batteries, cleaners, electronics, and pesticides.

3) **Solid Waste Disposal and Codisposal Site Program**. The Program was established in 1993 to cleanup solid waste sites and solid waste located at codisposal sites where the responsible party either cannot be identified or is unwilling or unable to pay for the timely remediation of the site, and where cleanup is necessary to protect public health and safety or the environment. The Program provides three funding to local governments. The Illegal Disposal Site Abatement Grant Program awards up to $500,000 to local governments for the cleanup of illegal disposal sites. The Legacy Disposal Site Abatement Program provides matching grants up to $750,000 for eligible costs to assist public entities committed to accelerating the pace of cleanup, restoration, and protecting public health and safety at legacy waste disposal sites. Local government loans are also available to public entities for the cleanup of sites to protect public health and safety and the environment, and the ability to repay the loan and costs that exceed the loan amount.

   Grants and loans awarded under the Program are limited to the cleanup of solid waste because the funding source for these loans is the Integrated Waste Management Fund (IWMF), which is supported by solid waste tipping fees. Illegal disposal sites are not limited to solid waste, and local governments working to cleanup these areas are often faced with hazardous and household hazardous waste alongside the solid waste.

4) **This bill**. This bill is intended to help local governments fund the hazardous waste portion of illegal disposal site cleanups. Local governments spend millions of dollars annually cleaning up illegally dumped waste. While funding exists through the Program for solid waste

cleanup, there is no parallel program for hazardous waste cleanup. In most instances, the hazardous waste portion has higher costs due to the more stringent testing, handling, and disposal requirements for hazardous wastes. This bill directs CalRecycle to expand the current Program to include the cleanup of illegally disposed hazardous waste disposed either with solid waste or without.

5) **Suggested amendments**. In addition to minor and technical amendments, the committee may wish to make the following changes to the bill:

   a) This bill relies on the IWMF to pay for the cleanup of hazardous waste and household hazardous waste. While these cleanup programs are important, the IWMF is funded by solid waste tipping fees and is not an appropriate funding source for this activity. The *committee may wish to amend the bill* to require DTSC to reimburse CalRecycle for any hazardous waste cleanup costs awarded under the bill. Additionally, the committee may wish to limit grant awards for this purpose to $500,000 per year.

   b) The author's office indicates that the intent of this bill is to incorporate this program into the existing Program at CalRecycle; however, the drafting implies that it is creating a new program. The *committee may wish to amend the bill* to clarify that this is an addition to the current Program and not a new, separate grant program.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Counties
League of California Cities
Rural County Representatives of California

Opposition

None on file

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 998 (Connolly) – As Amended March 15, 2023

SUBJECT: Biomass energy facilities: State Energy Resources Conservation and Development Commission: report.

SUMMARY: Requires the State Energy Resources Conservation and Development Commission (CEC) to report on the utility-scale biomass combustion facilities still in operation as of January 1, 2024, and specifies information the report must contain.

EXISTING LAW:

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

2) Includes biomass in the definition of "renewable electrical generation facility" for purposes of the state's renewable portfolio standard (RPS). (PRC § 25741)

3) Defines "biomass conversion" as the production of heat, fuels, or electricity by the controlled combustion of, or the use of other noncombustion thermal conversion technologies on specified materials when separated from other solid waste. (PRC § 40106)

4) Requires, by December 1, 2023, electrical corporations to collectively procure, through financial commitments of 5 to 15 years, inclusive, their proportionate share of 125 megawatts (MW) of cumulative rated generating capacity from existing bioenergy projects that commenced operations before June 1, 2013. At least 80% of the feedstock of an eligible facility, on an annual basis, shall be a byproduct of sustainable forestry management, which includes removal of dead and dying trees from Tier 1 and Tier 2 high hazard zones and is not from lands that have been clear cut. (Public Utilities Code 399.20.3 § (b)(1))

5) Requires an electrical corporation, local publicly owned electric utility, or community choice aggregator (CCA) with a contract to procure electricity generated from biomass that expires or expired on or before December 31, 2028, to seek to amend the contract to include, or seek approval for a new contract that includes, an expiration date five years later than the expiration date in the contract that was operative in 2022, except as specified. (PUC § 8388)

THIS BILL:

1) Requires the CEC, on or before December 31, 2024, to issue a report on the utility-scale biomass combustion facilities still in operation as of January 1, 2024, that includes all of the following:

    a) An assessment of the capacity of biomass combustion facilities still in operation as of January 1, 2024, to process forest biomass and material resulting from vegetation management and forest treatment projects.

b) An assessment of the role of each of the biomass facilities still in operation as of January 1, 2024, play in achieving the state's forest health improvement and wildfire risk reduction objectives.

c) Options to maximize the environmental benefits of biomass combustion facilities still in operation as of January 1, 2024, and an analysis of the feasibility of upgrading these facilities with new technologies or alterations in operations.

d) A recommended strategy to upgrade biomass combustion facilities, where appropriate, that considers all of the following:

i) Impacts on disadvantaged communities located near the facilities;

ii) Impacts on rural forested or agricultural communities;

iii) Impacts on the ability to maintain existing state, regional, and local capacity for managing forest or other excess biomass waste;

i) Cost of upgrading biomass combustion facilities and financing opportunities that may exist for those efforts; and,

i) Job creation or job loss that may result from the strategy.

b) Recommendations for how baseload power and the capacity for managing excess biomass waste would be made up if existing biomass combustion facilities still in operation as of January 1, 2024, subsequently cease operation.

c) Strategies for processing forest, agricultural, urban, or postfire waste in areas where combustion biomass facilities still in operation as of January 1, 2024, may cease operation temporarily or permanently.

d) Strategies for job training in any areas where job loss would occur due to a biomass combustion facility shutting down or being repowered.

e) An assessment of the type and duration of contract that would be necessary to encourage biomass combustion facilities still in operation as of January 1, 2024, to upgrade.

2) Requires the CEC to include in the report an evaluation of the feasibility of upgrading utility-scale biomass combustion facilities that ceased operation before January 1, 2024, to determine whether such facilities could help California increase its capacity to manage forest and other excess biomass.

3) Requires the CEC, when preparing the report, to do all of the following:

a) Coordinate with the State Air Resources Board (ARB) and local air districts on assessments of environmental benefits and available technologies to maximize those benefits;

b) Coordinate with the Department of Forestry and Fire Protection (CAL FIRE), the Department of Food and Agriculture, and the Department of Resources Recycling and Recovery on feedstock assessments for forest, agricultural, urban, and postfire waste;

c) Engage with and solicit feedback from the local governments and communities in which biomass combustion facilities are located; and,

d) Provide opportunities for stakeholder and public input.

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

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Need for the bill**. Author's statement

> As California continues to struggle with the monumental task of processing millions-of-tons of forest waste generated by wildfire mitigation projects, the State remains reliant on many older, combustion biomass facilities that still utilize rudimentary technology. With forest material byproducts increasing, it is incumbent upon the State to identify opportunities to modernize remaining combustion biomass facilities to improve their function and reduce operational emissions. AB 998 accomplishes this task by requiring CEC to study these issues, as well as creating a contingency plan to respond to the loss to forest waste processing capacity and local jobs that could occur as the result of combustion biomass facilities shutting down, or temporarily ceasing to operate.

2) **Biomass.** Bioenergy generation, energy from biomass, uses existing waste as a form of electricity production. Common sources of biomass feedstock come from plant-based materials such as agricultural waste and residue, and forest residue and thinnings. Biomass is converted to energy through four main processes: direct combustion, thermochemical, chemical, and biological conversion. Direct combustion, or simply burning the biomass, is the most common method for converting biomass to useful energy. Thermochemical conversion—such as pyrolysis and gasification—breaks down the biomass material with heat, usually with little to no oxygen. Chemical conversion breaks down the biomass material through chemical reactions; whereas biological conversion—including fermentation and bacterial decay—breaks down the biomass material through the use of enzymes, bacteria, or other microbes.

   There are a variety of bioenergy technologies that fall into two major pathways for production: direct combustion of biomass and combustion of biomass derived gases. One of those gases, biogas, is generated from digesters and landfills among other sources. Producer gas can be generated through pathways such as gasification and pyrolysis.

   Today, according to the CEC, there are approximately 47 million bone dry tons (BDT) of biomass resource potential in California. According to the Board of Forestry, state

requirements to remove forest fuels on one million acres per year will lead to 10 to 15 million bone dry tons of forest waste biomass annually.

Forest operations such as logging, thinning, fuels reduction programs, and ecosystem restoration create a huge amount of woody biomass, and as much as half of the biomass is left in the forest. When residues from mastication and slash from timber harvests are left scattered throughout the forest, they act as additional dry surface fuel and serve to increase intensity and severity if a wildfire burns through the area. Often biomass materials are piled and burned creating air pollution, such as black carbon, or left to decay, creating methane, which has a global warming potential 28 times more powerful than carbon dioxide (CO_2) over a 100-year time horizon.

3) **Biomass energy on the grid**. In 2019, California increased its aggressive renewable energy goals: with Senate Bill 100 (De León, Chapter 312, Statutes of 2019), renewable sources must provide 60% of electricity by 2030, and renewable and carbon-free sources must provide 100% of electricity by 2045.

   Unlike variable renewable energy resources (such as solar and wind), bioenergy technologies can provide reliable and renewable baseload generation, or firm power, meaning that electricity can be generated during scheduled times and at predetermined power levels.

   The number of biomass plants in California has decreased significantly since the 1980s, though, due to expiring long-term contracts. In near term, they are hindered by high operation and feedstock transportation costs, which can result in insufficient revenue to cover operation and maintenance expenses.

   The technical electricity potential of biomass feedstock products is 35,000 GigaWatt hours (GWh) or enough to support 4,650 megawatts (MW) of capacity. The CEC's September 2020 report *Utility-Scale Renewable Energy Generation Technology Roadmap* estimated that the resulting electricity generation possible from bioenergy if the entire technical capacity is captured is 21,500 GWh, which would be enough electricity to provide 6.6% of 2045 SB 100 goals.

   Currently, there are about 30 direct-combustion biomass facility in operation with a capacity of 640 MW. These biomass plants use about five million BDT of biomass per year – or about 10% of the total BDT biomass resource potential.

   Last year, the Legislature approved SB 1109 (Caballero, Chapter 364, Statutes of 2022) to extend requirements on electric investor-owned utilities and CCAs to procure energy from biomass generating electric facilities by five years and requires extension of existing contracts by five years. The bill also extended electrical corporations' obligation to collectively procure their proportionate share of 125 MW of cumulative rated generating capacity from existing bioenergy projects commencing operation before June 1, 2013, through financial commitments of 5 to 15 years.

4) **Challenges to biomass energy.** The CEC's *Estimated Cost of New Utility-Scale Generation in California: 2018 Update* explains that some of California's biomass plants that originally came on-line in the 1980s and 1990s either shut down or were idled starting around 2010 as supply contracts ran out. California's forestry waste has increased as drought and tree die-off have provided large amounts of fuel for forest fires. This situation has highlighted the need

for additional biomass plants to use forest waste productively. As a result, some idled biomass generation has come back into operation, not necessarily at full capacity, and new projects are being developed. Unlike biomass plants that had large fuel streams from local farms, these new and repowered facilities rely on forest waste, which is less concentrated and produces less waste within the same fuel supply distance.

There are various limitations to utility scale biomass combustion, including cost of feedstocks, which are highly variable due to ability to transport from rural, mountainous areas to biomass facilities. Air quality presents another challenge. Biomass conversion systems produce air emissions due to the combustion of biomass or through production of syngas or biogas followed by their combustion, and California's air quality standards can be prohibitive to the location and permitting of these facilities.

Notably, while these facilities play an important role in mitigating wildfire risk, many facilities are decades-old and still rely on rudimentary combustion technology. Remaining biomass facilities may have opportunities for retrofits to reduce emissions, make technological improvements, and potentially increase forest waste processing capabilities.

5) **This bill**. AB 998 would require the CEC to issue a report on the utility-scale biomass combustion facilities still in operation as of January 1, 2024, that includes an assessment of the capacity, feedstock, emissions, options to reduce emissions, feasibility of repowering, grid services, and other operational factors of each facility; assessment of costs and comparison to other biomass energy technologies; and, a strategy, if it makes sense, to modernize some or all biomass combustion facilities to noncombustion conversion technologies.

6) **Double referral**. Should the Committee approve the bill, it will be referred to the Assembly Utilities and Energy Committee.

7) **Related legislation**.

AB 625 (Aguiar-Curry) establishes the Forest Waste Biomass Utilization Program to develop an implementation plan to meet the goals and recommendations of, and the comprehensive framework to align with the state's wood utilization policies and priorities and focused market strategy of, specified statewide forest management plans, and to develop a workforce training program to complement the workforce needs associated with the implementation plan. This bill is scheduled to be heard in the Assembly Natural Resources Committee on March 27.

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

California Compost Coalition
Rural County Representatives of California
San Joaquin County Board of Supervisors
San Joaquin Farm Bureau Federation
Sierra Business Council

Opposition

None on file.

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1167 (Wendy Carrillo) – As Introduced February 16, 2023

SUBJECT: Oil and gas: acquisition: bonding requirements.

SUMMARY: Requires a person who acquires the right to operate a well or production facility to file with the State Oil and Gas Supervisor (supervisor) a bond for the well or production facility in an amount determined by the supervisor to be sufficient to cover, in full, all costs of plugging and abandonment and site restoration.

EXISTING LAW:

1) Pursuant to Governor Newsom's direction, requires the State Air Resources Board (ARB) to evaluate how to phase out oil extraction by 2045 through the climate change scoping plan, the state's comprehensive, multi-year regulatory and programmatic plan to achieve required reductions in greenhouse gas emissions (GHG). (Executive Order N-79-20)

2) Establishes the Geologic Energy Management Division (CalGEM) in the Department of Conservation under the direction of the supervisor, who is required to supervise the drilling, operation, maintenance, and abandonment of oil and gas wells. (Public Resources Code (Public Resources Code (PRC) § 3000, et seq.)

3) Requires an operator who engages in the drilling, redrilling, deepening, or in any operation permanently altering the casing, of a well, or who acquires a well, to file with the supervisor an individual indemnity bond for each well so drilled, redrilled, deepened, or permanently altered, or acquired at $25,000 for each well that is less than 10,000 feet deep, and $40,000 for each well that is 10,000 or more feet deep. (PRC § 3204)

4) Authorizes an operator who engages in the drilling, redrilling, deepening, or in any operation permanently altering the casing, of 20 or more wells at any time, to file with the supervisor one blanket indemnity bond to cover all the operations in any of its wells in the state in lieu of an individual indemnity bond for each operation as required by Section 3204. Specifies bond amounts. (PRC § 3205)

5) Requires that all operators of oil and gas wells submit cost estimates to CalGEM for the total cost of plugging and abandonment for each of their wells and the decommissioning of all production attendant facilities. (PRC § 3205.7)

6) Requires CalGEM to develop criteria to be used by operators for estimating costs to plug and abandon wells and decommission attendant production facilities, including site remediation. Requires the criteria to include, but not be limited to, all of the following requirements: (PRC § 3205.7)

    a) Operators shall calculate the estimated cost to plug and abandon each well and decommission attendant production facilities of the operator using the criteria developed by CalGEM.

b) For the site of each well, attendant production facility, or lease, the operator shall calculate the estimated cost of full site remediation using criteria developed by CalGEM.

c) Calculations of estimated costs under this subdivision shall be determined in accordance with generally accepted accounting principles issued by the Financial Accounting Standards Board.

7) Authorizes the supervisor, if the supervisor is unable to determine that an operator who acquired ownership of a well after January 1, 1996, has the financial resources to fully cover the costs of plugging and abandonment of the well or decommissioning deserted production facilities, to undertake plugging and abandonment of the well or decommissioning deserted production facilities. (PRC § 3237)

8) Establishes the Administrative Fund in the State Treasury for expenditure by certain public entities in connection with various activities relating to oil and gas operations, as specified. Requires CalGEM to administer and manage the Oil and Gas Environmental Remediation Account (Account) in the Administrative Fund. Requires moneys in the Account to be used, upon appropriation by the Legislature, to plug and abandon oil and gas wells, decommission attendant facilities, or otherwise remediate sites that the supervisor determines could pose a danger to life, health, water quality, wildlife, or natural resources, as specified. (PRC § 3261)

9) Prohibits CalGEM from expending more than $5 million from the Administrative Fund for purposes related to hazardous wells, idle-deserted wells, hazardous facilities, and deserted facilities, and reserves unspent funds to be returned to the Administrative Fund. (PRC § 3258)

THIS BILL:

1) States the intent of the Legislature that the oil and gas industry pay for all necessary costs of plugging and abandonment and site restoration of oil and gas wells.

2) States the intent of the Legislature that, to minimize the risk that the state will be liable for costs of plugging and abandonment, no well be transferred to another owner until and unless a bond has been filed that would cover the full cost of plugging and abandonment and site restoration.

3) Requires a person who acquires the right to operate a well or production facility, whether by purchase, transfer, assignment, conveyance, exchange, or other disposition, to, among other requirements, obtain an indemnity bond for each well consistent with specified requirements.

4) Requires the supervisor to maintain records of all transfers recognized as complete, including all materials required to be provided by the new operator, and to make those records available in a searchable and aggregable format on CalGEM's internet website.

5) Requires, notwithstanding any other provision of this chapter, a person who acquires the right to operate a well or production facility, by purchase, transfer, assignment, conveyance, exchange, or other disposition, to, as soon as possible, but not later than the date when the acquisition of the well or production facility becomes final, file with the supervisor a bond for the well or production facility in an amount determined by the supervisor to be sufficient

to cover, in full, all costs of plugging and abandonment and site restoration and regulations implementing this chapter.

6) Requires the supervisor to determine the amount of the indemnity bond required based on the supervisor's determination of the full costs of plugging and abandonment and site restoration consistent with the criteria developed.

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

FISCAL EFFECT: Unknown.

COMMENTS:

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

> AB 1167 would ensure that the State of California receives an adequate cash bond equal to the full cost of a site cleanup when an oil well is sold. This will ensure the financial responsibility of clean up and remediation falls with the oil well operators and not California tax payers in the event the well is "orphaned." As California's oil production declines, oil well owners are selling wells to companies who are less likely to be in a financial position to complete the required remediation. This bill will help mitigate environmental impacts that historically affect vulnerable communities.

2) **Oil production in California.** Commercial oil production started in the middle of the 19th century from hand-dug pits and shallow wells. In 1929, at the peak of oil development in the Los Angeles Basin, California accounted for more than 22% of total world oil production. California's oil production reached an all-time high of almost 400 million barrels in 1985 and has generally declined since then. Since California's crude oil production has declined steadily in the last few decades, the number of nonproductive, or "idle", wells throughout California has steadily increased. Furthermore, California has an ambitious plan to phase out the use of fossil fuels to meet its climate goals.

3) **Orphan oil and gas wells.** In California, an idle well is a well that has not been used for two years or more and has not yet been properly plugged and abandoned (sealed and closed). Plugging and abandonment involves permanently sealing the well with a cement plug to isolate the hydrocarbon-bearing formation from water sources and prevent leakage to the surface. If a well is not properly sealed and closed, it may provide a pathway for hydrocarbons or other contaminants to migrate into drinking water or to the surface.

   According to CalGEM, there are more than 37,000 known idle wells in California, all of which will eventually come to their end of life, and their owner/operators will be required to plug the wells with cement and decommission the production facilities, restoring the well site to its prior condition. Idle wells can become orphan wells if they are deserted by insolvent operators. When this happens, there is the risk of shifting responsibilities and costs for decommissioning the wells to the state. According to the California Council on Science and Technology (CCST), there currently are more than 5,500 orphan wells with no responsible solvent operator to appropriately remediate the well and the associated production facilities.

Orphan wells without proper remediation can result in negative environmental, health, and safety impacts. For example, deserted wells can leak oil and other injected fluids used for oil and gas extraction, which can contaminate nearby sources of water. In addition, deserted wells can release benzene and methane, among other air pollutants, polluting local air quality. These environmental impacts can pose health hazards, such as harm to respiratory health, to residents in nearby communities. Just last year, U.S. News reported that explosive levels of methane are leaking 370 feet from an elementary school and homes in Bakersfield. Deserted wells can also present physical safety concerns, potentially endangering unsuspecting people and wildlife.

4) **Financial impact of orphaned wells**. The state has access to some industry-funded funding sources to cover the costs of orphan wells. The Administrative Fund, which is used to plug and abandon oil and gas wells, decommission attendant facilities, or otherwise remediate sites, is funded by fees paid by oil and gas well operators based upon the amount of oil and/or natural gas they produce annually and is capped at $7.5 million.

   Also, if an operator does not have an Idle Well Management Plan, the operator is required to pay annual idle well fees for each of the operator's idle wells. The fees are deposited into the Hazardous and Idle-Deserted Well Abatement Fund to help fund the permanent sealing and closure of deserted wells. The state collects about $10 million in idle well fees annually.

   In the last five years, CalGEM has spent, on average, $2 million annually from the Administrative Fund and the Hazardous and Idle-Deserted Well Abatement Fund to remediate roughly 11 deserted wells per year. CalGEM identifies deserted wells to remediate by prioritizing wells that pose the highest relative risk to public health, safety, and the environment.

   In fiscal years 2022/2023 and 2023/2024, $50 million in California state General Fund dollars – taxpayer dollars – are appropriated to CalGEM to plug and abandon orphan and deserted wells – for a total of $100 million dollars over the two years.

   In August 2022, California was awarded $25 million in initial grant funding from the federal government's orphan well program authorized in the bipartisan Infrastructure Investment and Jobs Act. California is eligible for potentially an additional $140 million in future grants.

   Even with those industry-funded fees and state and federal appropriations, the amount fall short of what is need to plug and abandon all of the known 5,500 orphan wells.

5) **Bond requirements.** Bonds required to be posted when a drilling permit is issued are intended to cover plugging and abandonment costs for idle wells that become orphaned. Operators who engage in the drilling, redrilling, deepening, or in any operation permanently altering the casing of a well to file an individual indemnity bond for each well drilled, redrilled, deepened, or permanently altered, or acquired at $25,000 for each well that is less than 10,000 feet deep, and $40,000 for each well that is 10,000 or more feet deep. Operators are also allowed to file one blanket indemnity bond to cover all the operations in any of its 20+ wells in the state in lieu of an individual indemnity bond for each operation. The amount for the blanket bonds are also specified in statute.

However, the statutorily set bond values are often not enough to fully cover the costs of plugging and decommissioning a well. In 2013, SB 665 (Wolk, Chapter 315, Statutes of 2013) raised indemnity bond amounts for wells after they had not been changed for 14 years. This effort was, in part, motivated by a U.S. Government Accountability Office (US GAO) report that cited the inadequacy of indemnity bond amounts and inconsistencies in their application for oil and gas wells on federal lands under the jurisdiction of the U.S. Bureau of Land Management (US BLM). The Senate Natural Resources & Water Committee notes in a past analysis that in a 2018 report, the US GAO evaluated the US BLM's response to their earlier review. Again, the US GAO noted that oil and gas well indemnity bond minimum amounts for US BLM leased federal lands were considered by some BLM offices to be too low: $10,000 for an individual well, $25,000 for a state-wide blanket bond and $150,000 for a national bond. These amounts were established 60 – 70 years ago. Without a built-in escalator, the costs the bonds are meant to indemnify against are now much larger than the minimum bond amounts.

A 2018 CCST report, *Orphan Wells in California: An Initial Assessment of the State's Potential Liabilities to Plug and Decommission Orphan Oil and Gas Wells*, found that while the average cost statewide to plug and abandon a well is $68,000, the average value of available bonding per well is roughly $1,000, leaving the total net difference between plugging costs and available bonds across all oil and gas wells in the state at about $9.1 billion.

As a step toward addressing the insufficiency of these indemnity bonds, the Legislature gave CalGEM authority, per SB 551 (Jackson, Chapter 774, Statutes of 2019), to develop criteria to be used by operators for estimating costs to plug and abandon wells and decommission attendant production facilities, including site remediation. SB 551 also required CalGEM to begin requiring each operator of an oil or gas well to submit a report to the supervisor that demonstrates the operator's total liability to plug and abandon all wells and to decommission all attendant production facilities, including site remediation, on a schedule determined by the supervisor.

The cost estimates will be due to CalGEM beginning in 2023, and every five years thereafter. CalGEM is currently developing regulations establishing criteria to be used for cost estimates and the cost estimate approach may be improved by any operator cost data that CalGEM receives.

Further, AB 1057 (Limón, Chapter 771, Statutes of 2019) authorized CalGEM to require an operator to provide an amount of security acceptable to CalGEM based on CalGEM's evaluation of the risk that the operator will desert its well or wells and the potential threats the operator's well or wells pose to life, health, property, and natural resources. That law sets a floor on the amount of the reasonable costs to plug and abandon operator's wells at $30 million.

CalGEM is developing a methodology to screen, rank, and prioritize California's orphan, deserted, and potentially deserted wells to be permanently plugged and sealed. A draft of the screening methodology was available for public comment until October 14, 2022. The draft proposes scoring wells to emphasize the risk based on each of the following: (1) impact on disadvantaged communities; (2) proximity to communities and sensitive environments; and, (3) well condition.

Once the screening methodology is finalized, CalGEM anticipates it will take several months to apply the screening process to the wells in the inventory and is making every effort to conduct public comment and finalize the screening and prioritization methodology as soon as possible.

6) Sales and transfers. As the state shifts away from fossil fuels to renewable energy, many oil industry operators are selling assets to offload wells with a diminished capacity for return. Supermajors Shell and ExxonMobil recently agreed to sell more than 23,000 wells in California, which they owned through a joint venture called Aera Energy, to German asset management group IKAV for an estimated $4 billion. Aera accounts for about a quarter of California's oil and gas production, largely from pumping in Kern and Ventura counties. The Los Angeles Times (LAT) reported that IKAV will inherit a portfolio littered with wells past their prime. Nearly 9,000 Aera wells were idle as of early October 2022, meaning about 38% of the company's unplugged inventory isn't producing oil or gas, according to state data.

If it's not profitable to return wells to production, they need to be plugged. But if a company doesn't plug its wells before walking away, wells are orphaned and the cleanup costs ultimately fall to taxpayers and current operators through fees.

The LAT found that California has the authority to ask for an additional $30 million in financial security from a single operator, but only requires Aera to hold a $3 million bond. As a result, Aera's bonds cover less than half a percent of the $1.1 billion that ProPublica estimates it would cost the state to plug the wells based on the average cost to California for past well plugging.

7) **This bill**. To indemnify the state against the risk of an orphaned well after a transfer from a well owner to another, AB 1167 will require a person who acquires the right to operate a well or production facility to file with the supervisor a bond for the well or production facility in an amount determined by the supervisor to be sufficient to cover, in full, all costs of plugging and abandonment and site restoration. The bill also provides that CalGEM will not recognize the transfer as complete until such bond is in place.

The Natural Resources Defense Council, sponsor of the bill, explains that the current bonding shortfall becomes a heightened risk for the state when well owners transfer their aging wells to potentially less solvent owners. They state:

> This risk already materialized into multimillion dollar liability for the state when the owner of the idle wells on Rincon Island went bankrupt in 2016, and the situation threatens to repeat itself as California's oil production dwindles and owners increasingly seek to offload their marginal and idle wells, as Aera Energy (an Exxon/Mobil partnership) did last year…
>
> AB 1167 would squarely address this problem by requiring that any buyer of an oil well in California post a bond for the full cost of plugging and abandonment, ensuring that well owners cannot use sales to pass the buck for their cleanup costs to the state's taxpayers.

8) Relevant legislation.

a) SB 1295 (Limón, Chapter 844, Statutes of 2022) eliminated the $5 million cap on the Administrative Fund to enable CalGEM to expend the state funds as needed.

b) SB 1125 (Grove, 2022) would alter existing bonding requirements for oil and gas wells. This bill failed passage in the Senate Natural Resources & Water Committee.

c) SB 47 (Limón, Chapter 238, Statutes of 2021) increased the amount of oil production fees used to address orphan wells to $5 million annually.

d) AB 896 (Bennett, Chapter 707, Statutes of 2021) gave CalGEM authority to impose a claim and lien upon the real property can and using lien on property owned by any operator or responsible party of an oil or gas well to recoup costs.

e) SB 47 (Limón, Chapter 238, Statutes of 2021) increased the cap on the Administration Fund, which is funded by fees paid by oil and gas well operators based upon the amount of oil and/or natural gas they produce annually to $5 million annually starting with FY 2022-2023.

f) AB 1057 (Limón, Chapter 771, Statutes of 2019) authorized CalGEM to seek additional financial surety from at risk operators, among other things

g) AB 2729 (Williams, Chapter 272, Statutes of 2016) increased annual idle well fees, based on the amount of time each well has been idle. The law also requires the operator of any idle well, even if that idle well is already bonded, to either pay the annual fee or file an Idle Well Management Plan to manage or eliminate their long-term idle wells.

h) SB 724 (Lara, Chapter 652, Statutes of 2017) substantially revised CalGEM's processes for addressing hazardous and deserted wells and facilities, and temporarily increased the annual cap on expenditures for plugging and abandoning wells such as these to $3 million annually for 4 years.

i) AB 2756 (Thurmond, Chapter 274, Statutes of 2016) substantially enhanced the CalGEM's (formerly the Division of Oil and Gas) penalty and investigative authority and allowed certain civil penalties to be spent on environmentally beneficial projects, among other things.

REGISTERED SUPPORT / OPPOSITION:

Support

1000 Grandmothers for Future Generations
350 Bay Area Action
350 Sacramento
Aequor INC.
American Solar Energy Society
Ban Sup
Biodiversity First!
Breathe Southern California
California Environmental Voters

California Nurses for Environmental Health and Justice
Californians for Western Wilderness
CALPIRG
Catholic Charities, Diocese of Stockton
Center for Biological Diversity
Center for Climate Change and Health
Center for Community Energy
Center on Race, Poverty & the Environment
Central California Environmental Justice Network
Clean Water Action
Cleanearth4kids.org
Climate Action California
Climate Action Mendocino
Climate First: Replacing Oil & Gas
Climate Reality Project, Los Angeles Chapter
Climate Reality Project, San Fernando Valley
Ecology Center
Elders Climate Action, Norcal and Socal Chapters
Elected Officials to Protect America - California
Environment California
Environmental Defense Fund
Environmental Working Group
Equity Transit
Facts: Families Advocating for Chemical & Toxics Safety
Feminists in Action Los Angeles
Fossil Free California
Friends of Harbors, Beaches and Parks
Greenpeace USA
Indigenous Environmental Network
Indivisible Ventura
Natural Resources Defense Council
North County Climate Change Alliance
Oil & Gas Action Network
Recolte Energy
Santa Cruz Climate Action Network
Sierra Club California
Socal 350 Climate Action
Sunflower Alliance
Sunrise Movement Orange County
Sustainable Mill Valley
Sustainable Silicon Valley
The Climate Center

Opposition

Western States Petroleum Association

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1172 (Calderon) – As Introduced February 16, 2023

SUBJECT: Nuclear fusion

SUMMARY: Requires the California Energy Commission (CEC) to submit a study to the Legislature analyzing the feasibility of using commercially viable nuclear fusion to advance California's progress towards its statutory renewable energy and climate mandates.

EXISTING LAW:

1) Requires the CEC to conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices and use these assessments and forecasts to develop and evaluate energy policies and programs that conserve resources, protect the environment, ensure energy reliability, enhance the state's economy, and protect public health and safety. (Public Resources Code (PRC) § 25000, et seq)

2) Requires the CEC to adopt the integrated energy policy report (IEPR) every two years, which must contain an overview of major energy trends and issues facing the state, including, but not limited to, supply, demand, pricing, reliability, efficiency, and impacts on public health and safety, the economy, resources, and the environment. (PRC § 25300-25328)

THIS BILL:

1) Requires the CEC, on or before June 1, 2025, to submit a study to the Legislature analyzing the feasibility of using commercially viable nuclear fusion to advance California's progress towards its statutory renewable energy and climate mandates.

2) Requires the study to do all of the following:

    a) Identify necessary regulatory actions upon advanced clean fusion energy becoming commercially viable.

    b) Identify the regulatory obstacles that may arise during nuclear fusion implementation and provide recommendations to address those obstacles.

    c) Analyze the steps needed to create a skilled and trained advanced clean fusion energy workforce.

    d) Identify state and federal investments available for advanced clean fusion energy.

3) Makes related findings and declarations.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Background**. There are two fundamental ways to release energy from nuclear reactions: fission and fusion of atomic nuclei. Nuclear fission is a nuclear reaction or a radioactive decay process in which the atomic nucleus splits into lighter nuclei, releasing some combination of particles and energy. Nuclear fusion is a reaction in which multiple atomic nuclei combine to form a combination of new atomic nuclei and subatomic particles with the resulting mass difference manifesting as either an absorption or release of energy. Electricity generating technologies based on fission are commercially available, whereas fusion is still in the stages of research and development.

   A fusion reaction occurs when atomic nuclei, such as hydrogen and its isotopes (deuterium and tritium), are forced together (using some combination of extremely high temperature, pressure, or velocity to overcome the electrostatic force) until they fuse into a nuclei of a heavier element. The fusion process releases a combination of particles and kinetic energy proportional to the difference in mass. There are multiple fusion methods that are currently being pursued for use in a commercial reactor system.

   To generate commercial energy from fusion, the released energy would be converted to heat, which in turn is converted to electricity via a conventional generator cycle. Although the fusion reaction does not produce significant or long-lived radioactive byproducts, the high-energy particles irradiate the surrounding reactor vessel and associated components. The irradiated material could pose potential disposal problems similar to those for the irradiated fission reactor vessel. The reasons fusion continues to be actively pursued is that unlike nuclear fission, there are less waste products, no risk of a nuclear melt down, and fusion power provides more energy for a given weight of fuel than any fuel-consuming energy source currently in use.

   The aim of the controlled fusion research program is to achieve "ignition," which occurs when enough fusion reactions take place for the process to become self-sustaining, with fresh fuel then being added to continue it. Once ignition is achieved, there is net energy yield – about four times as much as with nuclear fission. According to the Massachusetts Institute of Technology, the amount of power produced increases with the square of the pressure, so doubling the pressure leads to a fourfold increase in energy production.

   The world's most powerful laser fusion facility, the National Ignition Facility (NIF) at Lawrence Livermore National Laboratory, was completed in March 2009. Using its 192 laser beams, NIF is able to deliver more than 60 times the energy of any previous laser system to its target. In December 2022, a team at NIF conducted the first controlled fusion experiment in history to reach the ignition milestone, meaning it produced more energy from fusion than the laser energy used to drive it.

2) **Author's statement**:

   California's commitment to creating climate resiliency policies has positioned the state as a leader in the renewable energy industry. With the goal of reaching carbon neutrality by 2045 and an exacerbated need for electricity, the state must continue investing in existing and promising renewable clean energy sources.

   There have been several milestones highlighting the promising progress of the nuclear fusion industry. Active stakeholders are on the path to creating commercially variable reactors that can safely generate clean energy to power cities and municipalities. AB

1172 is an effort to analyze how California can safely integrate fusion energy technology as a renewable energy source. Identifying regulatory requirements and adoption hurdles is critical to deploying clean fusion energy and meeting our climate goals.

3) **Is nuclear fusion at a stage where commercial viability can be evaluated**? While an assessment of the state and potential of nuclear fusion is a plausible assignment for the CEC, perhaps as a component of the next IEPR, it's hard to imagine how the CEC, or anyone, could evaluate commercial viability at this stage. Determining the potential of fusion energy as a meaningful source of electricity requires a leap ahead of the current stage of research and demonstration, to consider cost and scale. At this stage, cost is astronomical and scale is tiny. It's not clear how the CEC will be able to predict the extent and timing of the significant innovations needed to achieve commercial viability.

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

REGISTERED SUPPORT / OPPOSITION:

Support

TAE Technologies (sponsor)
Fusion Industry Association
Fusion Is Tomorrow's Energy

Opposition

None on file

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1195 (Calderon) – As Introduced February 16, 2023

SUBJECT: Climate Change Preparedness, Resiliency, and Jobs for Communities Program: climate-beneficial projects: grant funding.

SUMMARY: Establishes the Climate Change Preparedness, Resiliency, and Jobs for Communities Program to provide grants to develop and implement multibenefit, community-level, climate beneficial projects to support community and landscape resiliency and workforce development.

EXISTING LAW:

1) Requires the Air Resources Board (ARB), pursuant to California Global Warming Solutions Act of 2006 (AB 32, Núñez, Chapter 488, Statutes of 2006), to adopt a statewide greenhouse gas (GHG) emissions limit equivalent to 1990 levels by 2020 and adopt regulations to achieve maximum technologically feasible and cost-effective GHG emission reductions.

2) Establishes the Greenhouse Gas Reduction Fund (GGRF) as the repository for all moneys, except for fines and penalties, collected by ARB from the auction or sale of allowances pursuant to a market-based compliance mechanism (i.e., the cap-and-trade program adopted by ARB under AB 32).

3) Establishes the GGRF Investment Plan and Communities Revitalization Act (AB 1532, Pérez, Chapter 807, Statutes of 2012) to set procedures for the investment of GHG allowance auction revenues. AB 1532 authorizes a range of GHG reduction investments and establishes several additional policy objectives.

4) Requires the GGRF Investment Plan to allocate a minimum of 25% of the available moneys in GGRF projects located within identified disadvantaged communities. (AB 1550, Gomez, Chapter 369, Statutes of 2016)

5) Defines the following terms:

    a) "Disadvantaged communities" as areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation, and areas with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment. (Health and Safety Code (HSC) § 39711)

    b) "Low-income household or low-income community" as those with household incomes at or below 80% of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits. (HSC § 39713(d)(1))

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

d) "Disadvantaged community" is a community with a median household income less than 80% of the statewide average. "Severely disadvantaged community" means a community with a median household income less than 60% of the statewide average. (Public Resources Code (PRC) § 75005(g))

6) Establishes the Transformative Climate Communities (TCC) Program, to be administered by the Strategic Growth Council (SGC), and requires the program to fund the development and implementation of neighborhood-level transformative climate community plans that include multiple, coordinated GHG emissions reduction projects that provide local economic, environmental, and health benefits to disadvantaged communities identified by the California Environmental Protection Agency (CalEPA). (PRC § 75240)

7) Requires SGC to award competitive grants to eligible entities, as specified, through an application process and to develop guidelines and selection criteria for plan development and implementation of the program, as provided. (PRC § 75241)

8) Authorize SGC to offer advance payments up to 25% of the grant amount. (PRC § 75245)

THIS BILL:

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

a) "Eligible entity" includes, but is not limited to, a nonprofit organization, a special district, a joint powers authority, or a tribal government that is eligible to apply for and receive grant funding from SGC pursuant to the program.

b) "Program" means the Climate Change Preparedness, Resiliency, and Jobs for Communities Program.

c) "Underresourced community" means a community identified pursuant to Section 39711 of the HSC, subdivision (d) of Section 39713 of the HSC, or subdivision (g) of Section 75005 of HSC.

2) Requires the SGC to administer the Program and fund grants to develop and implement multibenefit, community-level, climate beneficial projects to support community and landscape resiliency and workforce development.

3) Requires the SGC to award competitive grants to eligible entities through an application process and implement the Program to do all of the following:

a) Provide a preference for projects in underresourced communities.

b) Ensure that projects that receive grant funding maximize multibenefit, community-level, climate-beneficial projects that create community and landscape resiliency and workforce development benefits.

c) Make grant selections for plan development contingent on the implementation of one or more projects identified by the plan.

d) Disburse grants throughout the state to maximize the impacts and benefits of the program in as many communities as possible.

e) Ensure that the grant application process is simple and minimizes the resources necessary for an eligible entity to apply for grant funding.

4) Authorizes the SGC to prioritize projects that are administered by a special district or a state conservancy, and to award to an eligible entity a grant over multiple years.

5) Requires an eligible entity, to be eligible for grant funding, to deploy best management practices in the development and implementation of projects to reduce GHGs, remove barriers that will lead to GHG reductions, sequester GHGs, reduce vehicle miles travelled, or provide other climate or climate adaptation benefits.

6) Requires the SGC and all funded entities to endeavor to identify additional public and private sources of funding to sustain and expand the Program.

7) Authorizes SGC to provide financial assistance, when necessary, to assist eligible entities with the grant application process and to assist funded entities with project development and implementation.

8) Requires the SGC, before awarding grant funding under the Program, to, on or before July 1, 2024, develop guidelines to implement the program and criteria to select projects eligible for grant funding.

9) Requires SGC to consider comments, if any, from local governments, regional agencies, and other stakeholders. Requires SGC to conduct outreach to underresourced communities to encourage comments on the draft guidelines and selection criteria from those communities.

10) Requires the guidelines and selection criteria developed by the SGC to provide, at a minimum, for all of the following:

a) Community resiliency grants to support the development of climate-beneficial projects with multiple benefits, including, but not limited to, affordable housing, community greening, and workforce development.

b) In awarding community resiliency grants, requires SGC to prioritize projects that maximize one or more of the following benefits:

i) Affordable housing.

ii) Urban greening.

iii) School greening.

iv) River parkways.

v) Parks.

vi) Urban tree canopies.

vii) Water capture and reuse.

viii) Brownfield cleanup and remediation pilots.

ix) Workforce development.

x) Zero-emission appliances.

xi) Active transportation and trails.

xii) Zero- and near-zero emission vehicle technologies and infrastructure for underresourced communities.

11) Requires the SGC to attempt to do all of the following in its guidelines and selection criteria for community resiliency grants:

a) Incorporate the development of new affordable housing and the protection and restoration of existing affordable housing stock.

b) Include provisions that leverage funding pursuant to the Housing-Related Parks Program, as appropriate.

c) Use of a portion of funds by agencies or eligible entities to acquire and bank lands for future, integrated community climate resiliency projects.

d) Promote nongovernmental organization partnerships, especially between conservation, environmental justice, community-based, public health, workforce development, and housing organizations.

e) Promote a portfolio approach to select projects to receive grant funding, including support for local organizations that work in the community.

f) Support leveraging regional funds, including, but not necessarily limited to, funds from measures adopted by the County of Los Angeles, such as Measure A, Measure M, and Measure HHH adopted in 2016, Measure H adopted in 2017, and Measure W adopted in 2018.

g) Advance antidisplacement policies that promote equitable and sustainable project development without displacing existing communities.

12) Authorizes grant funds to be used for project and program costs that support project completion and maintenance, including any of the following:

a) Acquisition.

b) Restoration.

c) Enhancement.

d) Planning.

e) Capacity.

f) Construction.

g) Technical assistance.

h) Advanced payments.

i) Maintenance and operations.

j) Community access.

13) Landscape resiliency grants to support the development of climate beneficial projects with multiple benefits, including, but not limited to, water conservation, watershed resiliency, wildlife and fish species enhancements, and natural landscapes resiliency. Requires the SGC to prioritize projects that maximize one or more of the following benefits:

i) The coast and oceans.

ii) Natural lands.

iii) Natural community conservation plan and habitat conservation plan implementation.

iv) Wetlands and mountain meadows.

v) Wildfire management and restoration, including projects in the wildland urban interface.

14) Requires the SGC to attempt to do all of the following in its guidelines and selection criteria for landscape resiliency grants:

a) Promote nongovernmental organization partnerships, especially between conservation, environmental justice, and community-based organizations.

b) Promote a portfolio approach to select projects to receive grant funding, including support for local organizations that work in the community.

c) Support project deployment throughout the state.

d) Support leveraging regional funds.

e) Advance antidisplacement policies that promote equitable and sustainable development without displacing existing communities.

15) Authorizes grant funds to be used for project and program costs that support project completion and maintenance, including any of the following:

a) Acquisition.

b) Restoration.

c) Enhancement.

d) Planning.

e) Capacity.

f) Construction.

g) Technical assistance.

h) Workforce development.

i) Advanced payments.

j) Maintenance and operations.

k) Community access.

16) Climate and career pathways grants to support the development of climate-beneficial projects with multiple benefits that incorporate partnerships with nonprofit organizations that provide certifications or placement services for jobs and careers in the natural resources field, including, but not limited to, fire and vegetative management, restoration, parks, and natural resources management

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Need for the bill.** Author's statement:

> With repeated drought cycles, destructive wildfires, and rising sea levels, California must continue investing in efforts that combat climate change. It is imperative that we reduce greenhouse gas emissions, increase utilization of renewable energy sources, and target these efforts at the community level.
>
> Assembly Bill 1195 will create the Climate Change Preparedness, Resiliency, and Jobs for Communities Grant Program. The program will uplift disadvantaged communities by awarding grants to locals that deploy multi-benefit, climate resilient projects. The program will also grant landscape resiliency grants that will promote natural landscapes, water conservation, and fish and wildlife preservation.

2) **Environmental justice.** While climate change already impacts every region of the state, communities experience these impacts differently based on a wide range of factors. Many disadvantaged and low-income communities experience heightened risk and increased sensitivity to climate change and have less capacity and fewer resources to cope with, adapt to, or recover from climate impacts. These disproportionate effects are caused by physical (built and environmental), social, political, and/or economic factor(s), which are exacerbated by climate change.

   The Office of Environmental Health Hazard Assessment (OEHHA) developed and regularly updates the CalEnviroScreen, a tool that incorporates the most recent publicly available data for pollution and environmental health hazard indicators to identify the state's communities most disproportionately vulnerable to and impacted by environmental pollution for purposes of state climate investments (GGRF). At least 25% of funds must be allocated toward disadvantaged communities; at least 5% must be allocated toward projects within low-income communities or benefiting low-income households, and at least 5% must be allocated toward projects within and benefiting low-income communities, or low-income households, that are within a half-mile of a designated disadvantaged community. By mid-2022, of the $11.4 billion funds generated from Cap-and-Trade, nearly half -- $5.1 billion – of all invested funds will directly benefit California's priority populations, which include disadvantaged and low-income communities and low-income households statewide.

3) **Transformative Climate Communities Program**. TCC Program (or TCCP, but you used TCC Program above) to empower communities most impacted by pollution to choose their own goals, strategies, and projects to reduce GHGs and local air pollution with data-driven milestones and measureable outcomes.

   Initially funded by California's Cap-and-Trade program, TCC Program is now funded through the General Fund ($420 million over 3-years). The shift in the funding source may be attributed to the stability of the General Fund due to the state's previous surplus of revenues.

   Since 2018, SGC has awarded more than $230 million in TCC Program implementation and planning grants to 26 communities in California through a competitive process. SGC has awarded TCC Program implementation grants between $9 and $66.5 million to the

neighborhoods of South Stockton, East Oakland, Eastside Riverside, Sacramento's River District, Northeast San Fernando Valley (Los Angeles), Watts (Los Angeles), Downtown Ontario, and Fresno's Southwest, Downtown, and Chinatown neighborhoods. TCC Program also funds planning grants to help communities prepare for implementation. SGC awards TCC Program grants and partners with the Department of Conservation to implement them.

4) **Climate Change Preparedness, Resiliency, and Jobs for Communities Program**. This bill proposes creation of the Program, which would be *in addition to* TCC Program and, like TCC Program, funded by Cap-and-Trade funding. The Program would require SGC to fund grants to develop and implement multibenefit, community-level, climate-beneficial projects to support community and landscape resiliency and workforce development. More specifically, the bill would require grant guidelines to be developed for:

   Community resiliency grants to support the development of climate-beneficial projects with multiple benefits, including, but not limited to, affordable housing, community greening, and workforce development.

   Landscape resiliency grants to support the development of climate-beneficial projects with multiple benefits, including, but not limited to, water conservation, watershed resiliency, wildlife and fish species enhancements, and natural landscapes resiliency.

   Climate and career pathways grants to support the development of climate-beneficial projects with multiple benefits that incorporate partnerships with nonprofit organizations that provide certifications or placement services for jobs and careers in the natural resources field, including, but not limited to, fire and vegetative management, restoration, parks, and natural resources management.

   In addition, grant funds can be used to support project and program costs that support project completion and maintenance, such as acquisition, restoration, planning, technical assistance, and workforce development.

5) **How is this Program different from TCC Program**? The bill is remarkably similar to TCC Program, albeit with differences that the author contends make a significant difference for potential grant applicants.

   First, the grant sizes would be smaller. TCC Program grants sizes are larger, making the bar high and administrative burden prohibitive for smaller community groups intending to do smaller projects. The goal with AB 1195 is to get more funding out the door faster, enabling smaller projects to get funded and implemented. The bill requires SGC to "disburse grants throughout the state to maximize the impacts and benefits of the program in as many communities as possible" and "ensure that the grant application process is simple and minimizes the resources necessary for an eligible entity to apply for grant funding."

   The author may wish to consider better defining the size of the available grant and clarifying how small groups and/or recipients of smaller grants could be better suited by this program. This could include defining parameters on project planning costs (i.e. no more than x% of grant for planning), eligible project timing (i.e. 3-6 month implementation), grant value limits, etc.

Second, this Program would have a greater focus on natural resources and conservation, including landscaping with benefits for water conservation, watershed resiliency, wildlife and fish species enhancements, and natural landscapes resiliency.

The Legislative Analyst's Office (LAO) April 5, 2022 report, *Climate Change Impacts Across California -Crosscutting Issues*, notes that "given the magnitude of climate change impacts California already is beginning to experience, the Legislature will confront persistent questions about how the state should respond … Given that certain groups—such as low-income households, medically sensitive populations, and workers in outdoor industries—generally are more vulnerable to the effects of climate change, the Legislature may want to consider how it can target state programs in ways that support these populations."

AB 1195 attempts to capture that sentiment. However, the distinction between TCC Program and this new Program should be further refined.

6) **California's climate investments**. The 2022-23 fiscal year budget included $54 billion over 5 years to support transformative climate investments in transportation, energy, housing, education, wildfire resilience, drought, and health. Revenues from quarterly Cap-and-Trade auctions are deposited in the GGRF and the funds are generally allocated to climate-related programs. Under current law, about 65% of auction revenue is continuously appropriated to certain projects and programs, including high-speed rail, affordable housing, transit, and safe drinking water.

   This year, the state is facing a $22.5 billion budget deficit and the Governor's January 10 proposed significant cuts across the board for the state's climate investments and environmental programs, including $6 billion in cuts to the 5-year climate spending plan.

   It should be noted that the TCC Program funding is proposed to be cut from $140 million to $100 million (GGRF), and future year funding is uncertain.

   The Greenlining Institute, which sponsored the TCC Program-enacting legislation, did a 5-year review report on TCC Program provided recommendations for strengthening the program. The bulk of the recommendations revolve around funding such as:

   - Advocates were heartened by a funding increase approved in the recently-concluded California state budget process, but future funding is not guaranteed. The state must adequately and consistently fund the pathway from planning to implementation, and support the local ecosystems needed to support community transformation.

   - To sustain community transformation, the governor and legislature should explore ways to establish a consistent funding source for the program.

   Given the similarities between TCC and the program proposed by this bill, these fiscal recommendations would likely also apply to a new program at the SGC, especially in light of the budget deficit.

   Alternatively, AB 1567 (E. Garcia) proposes a $15.1 billion bond, the Safe Drinking Water, Wildfire Prevention, Drought Preparation, Flood Protection, Extreme Heat Mitigation, and Workforce Development Bond Act of 2023, for the next ballot. Given the state's foreseen

budget deficit over the next several fiscal years, some stakeholders are putting stock in this bond (and other proposed climate bonds currently in the Legislative process) to fund programs where state funding is likely to be reduced.

7) **Committee amendments**.

a) This bill provides a preference for projects in underresourced communities. The understood intent is to ensure prioritization for these communities. While "preference" may be synonymous with "prioritization," the committee may wish to amend the bill as follows to be consistent with the verbiage in the state's codified goals for investing in low income and disadvantaged communities.

Sec. 75302 (a)(1) ~~Provide a preference for~~ Prioritize projects in underresourced communities.

b) The SGC is politically appointed, which requires their compliance with the Fair Political Practices Act (FPPA). Under the FPPA, an elected official who fundraises or otherwise solicits payments from one individual or organization to be given to another individual or organization may be required to report the payment. Generally, a payment is considered "behested" and subject to reporting if it is made: at the request, suggestion, or solicitation of, or made in cooperation, consultation, coordination or concert with the public official; and, for a legislative, governmental or charitable purpose. AB 1195 requires SGC and all funded entities to endeavor to identify additional public and private sources of funding to sustain and expand the program. To prevent any perceived conflicts of interest, the Committee may wish to consider amending the bill as follows:

75303. (a) ~~The council and all funded entities shall endeavor to identify additional public and private sources of funding to sustain and expand the program.~~

c) In that same section, the bill allows the SGC to provide financial assistance to assist eligible entities with the grant application process. It is the understood intent to allow the SGC to provide technical assistance to grant applicants. The Committee may wish to amend the bill to make that clear. In addition, the SGC is authorized to provide advance payments to grantees under the TCC program. The Committee may wish to provide the same authority under this program as follows.

Sec. 75303 (a) The council may provide ~~financial~~ technical assistance, when necessary, to assist eligible entities with the grant application process and/or to assist funded entities with project development and implementation.

(b) The council may authorize advance payments on a grant awarded under this section in accordance with Section 11019.1 of the Government Code.

d) The bill requires grant recipients to deploy best management practices (BMP) in the development and implementation of projects to reduce GHGs. "BMP" is a term of art, often referring to adopted or published guidelines for conducting some sort of effort. There are no established BMPs for this specific purpose, so the Committee may wish to amend the bill as follows:

Sec. 75302 (c) To be eligible for grant funding pursuant to the program, an eligible entity shall ~~deploy best management practices in the development and implementation of projects to~~ reduce emissions of greenhouse gases, remove barriers that will lead to greenhouse gas emissions reductions, sequester greenhouse gases, reduce vehicle miles travelled, or provide other climate or climate adaptation benefits to greatest extent practicable.

e) Tribes are critical stakeholders to state policy development, and many reside in areas that have been developed into urban environments. The Committee may wish to consider amending the bill to include Tribes in the guidelines development process in Sec. 75304 (b) and Sec. 75304 (c)(2)(C)(i).

8) **Related legislation**.

SB 989 (Hertzberg, Chapter 712, Statutes of 2022) proposed establishing the Climate Change Preparedness, Resiliency, and Jobs for Communities Program to award community resiliency, landscape resiliency, and climate and career pathways grants, as specified, to underresourced communities. It was ultimately gut & amended with unrelated language before it was enacted.

AB 1640 (Ward, 2022) requires the Office of Planning and Research to facilitate the creation of regional climate networks and create standards for the development of a regional climate adaptation action plan to support the implementation of regional climate adaptation efforts. This bill was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Local Conservation Corps
California Invasive Plant Council
CALSTART
Endangered Habitats League
Fresno Metro Black Chamber of Commerce
Holos Communities
Land Trust of Santa Cruz County
Los Angeles Conservation Corps
Los Angeles Neighborhood Land Trust
Midpeninsula Regional Open Space District
Natural Resources Defense Council

Opposition

California Association of Realtors (unless amended)

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1279 (Mike Fong) – As Introduced February 16, 2023

SUBJECT: California Conservation Corps: contracts: community conservation corps.

SUMMARY: Extends the authorization for the California Conservation Corps (CCC) to enter into contracts with certified community conservation corps indefinitely, and would repeal language that required the CCC to file a report with the Legislature on or before January 1, 2023, on the success of any project or program undertaken pursuant to the contracts.

EXISTING LAW, pursuant to the California Conservation Corps governing statutes (Public Resources Code §14000-14424)

1) Establishes the CCC in the Natural Resources Agency (NRA) and requires the CCC to implement and administer the conservation corps program.

2) Directs CCC program activities, including the management of environmentally important lands and water, public works projects, facilitating public use of resources, assistance in emergency operations, assistance in fire prevention and suppression, energy conservation, and environmental restoration.

3) Finds and declares it is in the best interest of the state that federal funds designated to be expended by federal agencies for this purpose be allocated, to the extent feasible, to the CCC and certified community conservation corps.

4) Defines a “Community Conservation Corps" (also known as a local conservation corps, or LCC) as a nonprofit public benefit corporation, or an agency operated by a city, county, or city and county, that is certified by the CCC as meeting all of the specified criteria.

5) Authorizes the CCC, until January 1, 2024, to enter into a contract with an individual or collective of certified community conservation corps for a specified type of project or program.

FISCAL EFFECT: Unknown.

COMMENTS:

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

   Although the CCC was originally conceived as a labor source for trail maintenance and restoration, it has since evolved to a workforce development program. Corpsmembers now

learn skills such as, forestry management, energy auditing and installation, emergency services management, and firefighting. Many corpsmembers also receive their high school diplomas and industry certifications at the conclusion of their service. The CCC is designed as a one-year program, with the possibility of extension to up to three years pending performance of the member. More than 120,000 young people have participated in the CCC over the last 40 years. There are more than 1,623 corpsmember positions available at 26 centers statewide; nine of the centers are residential with 600 beds for the corpsmembers assigned to them.

2) **Local Conservation Corps**. LCCs are non-profit or local government entities that share a similar mission as the CCC, by providing job skills training and educational opportunities while preserving and protecting the environment. The CCC has a long history of working collaboratively with LCCs through the state certification program and CCC grant programs.

   The CCC certifies LCCs to ensure they are meeting statutory requirements and to make them eligible for CCC and other state grant funds. Annual certification by the CCC provides LCCs recognition that they are operating according to mandatory statutes and fulfilling the mission of what it means to be a conservation corps program.

   While the statewide CCC generally works in more remote areas, the LCCs work in urban areas, near corpsmembers' homes. This provides a critical opportunity to at risk young people with family responsibilities, especially young single parents.

   There are 14 state-certified LCCs in California, each of which is an individual nonprofit organization serving its local region. The mission of each LCC is to preserve and protect the environment and provide job skills training and educational opportunities to young men and women, primarily ages 18-26.

   Each LCC works with or operates a charter school where corpsmembers can earn their high school diploma or GED and get connected to college and vocational education programs. Corpsmembers are paid stipends and often receive scholarships upon completing their term of service. LCCs provide workforce training, on the job experience, and valuable certifications to help corpsmembers move forward in their careers and provide local businesses with a skilled, diverse, and qualified workforce.

   One quarter of all corpsmembers finish their high school diploma while in the Corps, and most graduates begin college. According to a 2014 economic analysis *The Economic Benefits of Bottle Bill Funding of the Local Conservation Corps*, while enrolled in the LCCs, each member receives education and job training that leads to $260 million in increased lifetime earnings for each year's class for each $20 million investment in LCCs. Finally, as more productive members of society, public finances are improved due to higher tax contributions and decreased demand for public services, generating over $14 million in revenue and savings.

3) **Funding the LCCs**. Since the first LCC's inception in 1982 (with the Marin County Conservation Corps), the LCCs had traditionally been funded through a variety of sources, including a mix of state and federal grants, contracts with service recipients, direct fundraising and the California Beverage Container Recycling and Litter Reduction Act

(Bottle Bill). As government budgets tightened after the recession, state and federal grants decreased, making the LCCs more dependent on Bottle Bill funding to remain solvent.

Early in the LCC's history, the Bottle Bill was passed in 1986, which including funding for a number of projects that support recycling, including the LCCs. Bottle Bill funding had increased over the years, as additional LCCs have been formed and is indexed to cost of living.

In part due to the LCCs' efforts, in 2014, California had the highest recycling rate in the nation, with 82% of CRV eligible products being recycled. As a result, however, the program was a victim of its own success; the high consumer participation and redeemed deposits left little funding leftover for recycling programs, including the LCCs.

At the time, Bottle Bill funds were the bread and butter of the LCC's budget, representing 75% of the LCC's funding portfolio, and as a result of the reliance of the Bottle Bill funds, the LCCs had invested substantially in capital equipment needed for recycling, that would become obsolete without recycling-related funding.

In response, the LCCs underwent a metamorphosis to make themselves eligible for alternative state funding sources unrelated to beverage container recycling and expanded the skills training opportunities for their corpsmembers.

In order to stabilize the LCCs' funding, the Legislature allocated additional funds from the Electronic Waste Recovery and Recycling Account, the California Tire Recycling Management Fund, and the California Used Oil Recycling Fund for activities related to each funding source, including beverage container recycling and litter abatement programs; programs relating to the collection and recovery of used oil and electronic waste; and, the clean-up and abatement of waste tires.

The LCCs have proven their ability to evolve and adapt to changing funding sources and expansions of their job skills training, which makes them a valuable partner to the CCC.

4) **Sunset extension**. Current law, enacted pursuant to AB 1928 (McCarty, Chapter 253, Statutes of 2018), sunsets the authorization for the CCC to enter into a contract with a LCC on January 1, 2024. That bill required the director of the CCC to file a report on the success of any program or project undertaken through those contracts.

That report is complete, but pending review in the Governor's office.

According to the author,

> "AB 1279 will remove the sunset on the California Conservation Corps' authority to contract directly with certified community conservation corps on critical projects across the state. Over the past five years, this contracting authority has proven to be an important tool to provide support for the state's disaster response efforts and meaningful job training opportunities for underserved youth. AB 1279 will make this critical authority permanent, allowing community conservation corps to continue their work responding to emergencies, providing green workforce development opportunities, and building more resilient communities throughout California."

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Local Conservation Corps

Opposition

None on file.

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

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 1347 (Ting) – As Introduced February 16, 2023

SUBJECT: Solid waste: paper waste: proofs of purchase

SUMMARY: Beginning January 1, 2024, prohibits stores from providing paper receipts to consumers except upon request. Prohibits the use of bisphenol A (BPA) or bisphenol S (BPS) in receipts.

EXISTING LAW:

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

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

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

    c) Requires generators of specified amounts of organic waste to arrange for recycling services for that material.

2) Requires retailers that are required to collect use tax from purchasers (including lessees) must give a receipt to each purchaser for the amount of the tax collected. The receipt does not need to be "in any particular form," but must include specified information including the name and place of business, the name and address of the purchaser, a description of the property sold or leased, and the date on which the property was sold or leased. (Revenue and Taxation Code §6001 et seq.)

3) Various laws regarding the collection of fees, including recycling fees on tires and certain electronic devices require that the fee is itemized on the invoice at the point of sale. (Various statutes)

THIS BILL:

1) Beginning January 1, 2024:

    a) Requires that a proof of purchase (i.e., receipt) only be provided to a consumer by a business at the consumer's option, unless it is otherwise required by state or federal law;

    b) Prohibits the printing of a proof of purchase by a business if a consumer opts not to receive the proof of purchase, unless it is otherwise required by state or federal law; and,

    c) Specifies that if a consumer opts to receive a proof of purchase, it must be provided in printed or electronic form, at the consumer's option, unless a prescribed form is otherwise required by state or federal law.

2) Specifies that a business is not required to provide an electronic proof of purchase if it is incapable of sending one due to limited internet connectivity, a power outage, or other unexpected technical difficulties.

3) Prohibits a proof of purchase provided to a consumer by a business from containing BPA or BPS.

4) Prohibits a proof of purchase provided to a consumer by a business from including printouts of items nonessential to the transaction if those items make the paper proof of purchase longer than necessary to provide the consumer with items essential to the transaction. Specifies that nonessential items include things like coupons and advertisements.

5) Authorizes the Attorney General, district attorney, or city attorney to enforce the provisions of the bill. Establishes that the first and second violation shall result in a notice of violation, and any subsequent violation is an infraction punishable by $25 per day, not to exceed $300 annually.

6) Specifies that nothing in the bill alters a consumer privacy protection or the consumer rights of individuals.

7) Defines terms used in the bill, including:

   a) "Business" as a person that accepts payment through cash, credit, or debit transactions. Specifies that business does not include health care providers, as specified, or nonprofit institutions that have annual gross sale receipts of less than $2 million.

   b) "Consumer" as a person who purchases, and does not offer for resale, food, alcohol, other tangible personal property, or services.

   c) "Person" as any individual, firm, association, organization, partnership, limited liability company, business trust, corporation, or company.

   d) "Proof of purchase" as a receipt for the retail sale of food, alcohol, or other tangible personal property, or for the provision of services, provided at the point of sale, but not including an invoice.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

   With the increasing adoption of e-receipts, paper receipts have become unnecessary and antiquated. Yet many businesses are still providing paper receipts, many of which are coated with toxic chemicals that makes them harmful to human health and nearly impossible to recycle. According to Green America's Skip the Slip report, over 3 million trees and 10 billion gallons of water in the United States are used to create proof of purchase receipts. That's a lot of environmental impact for something that we generally don't need, especially if you're just buying a pack of gum or getting a cup of coffee to-go. This bill would reduce waste and ensure that we don't expend valuable resources by simply

requiring businesses to only provide a receipt upon the request of the customer. Printed receipts would have to be BPA/BPS free and not be longer than necessary.

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

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

3) **Receipts**. Point-of-sale receipts in California are generally printed on white thermal paper, which is very thin, lightweight paper coated with a material that changes color when heated. Generally, this coating contains significant amounts of either BPA or BPS. According to the American Forest and Paper Association (AFPA), receipt paper used in California almost exclusively uses BPS. Because thermal paper is so thin, it generally contains no recycled content, and thermal paper is generally not recyclable.

   While paper is 15.5% of the state's disposed waste stream, receipts make up a small percentage of the total paper disposed in California. Estimates vary on the amount of receipt paper used in the US. According to the AFPA, the US annually uses approximately 180,000 tons of paper receipts. Grand View Research, which provides market information, estimates that around 280,000 tons of thermal paper is used in the US each year for receipts. California-specific data is not available.

   Bisphenols, including BPA, BPS, and other forms like bisphenol F, are endocrine disrupters that are associated with possible cancer and reproductive risks. According to the United States Environmental Protection Agency (US EPA), BPA is a reproductive, developmental, and systemic toxicant in animal studies and is weakly estrogenic, leading to questions about its potential impact on children's health and development. The US EPA notes that exposure to BPA (and BPS) may occur during manufacture and use of thermal paper and at its end-of-life. In one 2010 study, BPA was detected at levels between 0.8% and 2.8% of the total weight of the receipts tested. Moreover, the amount of BPA that is absorbed through the skin increases if hand sanitizer of hand cream had been applied prior to handling the receipt. Once touched, BPA can also be transferred by a cashier or consumer's hands to other surfaces, like food.

4) **Reduce, Reuse, Recycle**. This bill is focused on source-reduction. California's solid waste hierarchy places source reduction at the top of the solid waste management hierarchy, followed by reuse and then recycling. Disposal should be the last resort. Requiring consumers to request a paper receipt is intended to reduce the number of paper receipts generated, which will conserve the resources needed to make the receipts and reduce the generation of waste receipts.

   According to the AFPA, receipts are recyclable. While this may be technically true, CalRecycle indicates that they are highly discouraged from being recycled because their toxic BPA or BPS coatings contaminate the recycling stream. They are viewed by the waste industry as contaminants in the paper recycling stream. Their small size makes them nearly impossible to remove during the sorting process, making them difficult to manage.

   Similarly, they are technically compostable, in that they will break down in an industrial compost facility. However, the BPA and BPS coatings are also a contaminant in compost.

5) **European Union action**. The European Union (EU) adopted a regulation (Commission Regulation 2016/2235) in 2016 to ban the use of BPA, in concentrations greater than 0.02% by weight, in thermal paper used for receipts on and after January 2, 2020. The regulation cites risk to cashiers and consumers who are exposed to BPA by handling thermal paper receipts and goes on to state that, "the population at risk was the unborn children of pregnant workers and consumers exposed to BPA contained in the thermal paper they handle." The regulation's findings note that BPS, the most likely substitute to BPA in receipts, may have a toxicological profile similar to BPA; therefore, it encourages monitoring for the use of BPS in thermal paper and consideration of further action to restrict its use.

6) **This bill**. This bill is intended to reduce the amount of receipt waste generated in the state by requiring business to provide them only when requested by the consumer. Not only is this material not recyclable, the size and composition of receipts generally makes them a contaminant in the recycling stream.

   This bill also prohibits the use of toxic BPA and BPS in receipts, which would provide significant health benefits to consumers and especially to cashiers who handle large numbers of receipts on a daily basis. This change would also reduce the contamination associated with receipts that enter the recycling or composting streams. Should this bill become law, the author and stakeholders may wish to monitor what replacements are proposed by the industry for BPA and BPS to ensure that they are not replaced by another toxic chemical.

   The author may wish to consider amending the bill to update the findings and declarations as the bill moves through the legislative process.

7) **Previous legislation**. AB 161 (Ting) of 2019 was substantially similar to this bill. It was held in the Senate Appropriations Committee.

8) **Double referral**. This bill has also been referred to the Assembly Privacy and Consumer Protection Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

5 Gyres Institute
7th Generation Advisors
Active San Gabriel Valley
Ban Single Use Plastic (SUP)
Breast Cancer Prevention Partners
California Product Stewardship Council
Californians Against Waste
Clean Water Action
Educate. Advocate.
Environmental Working Group
Friends of the Earth
Global Alliance for Incinerator Alternatives (GAIA)
Green America
Greenpeace USA
Heal the Bay
National Stewardship Action Council
Natural Resources Defense Council (NRDC)
Northern California Recycling Association
Plastic Free Future
RethinkWaste
Save Our Shores
Sierra Club California
Surfrider Foundation
The Story of Stuff Project
Wishtoyo Chumash Foundation

Opposition

None on file

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