



July 14, 2017

More changes to bills affecting agriculture as the legislature moves closer to the Summer Recess deadline next Friday, July 21st.

Cap and Trade:

The saga of the cap and trade component of the state's greenhouse gas (GHG) program continued to play out this week. Last year the legislature gave the California Air Resources Board (CARB) the authority to extend the current GHG program from 2020 to 2030, but did not include the market based compliance mechanism (cap-and-trade) that is currently used to limit GHG emissions from large stationary sources. The businesses that are currently subject to the state's mandated GHG program, such as food processors, predominantly prefer the cap-and-trade program as opposed to a carbon tax or direct regulatory control measures because cap and trade is much more cost effective. There is a concern that if cap and trade is not extended, these businesses, including our energy providers, will pass even higher costs along to agricultural operations.

An earlier attempt in June to extend cap and trade was defeated. There are now two measures moving together that are essentially joined, although only the cap and trade measure has a 2/3's vote requirement. [AB 398](#) (Eduardo Garcia, D-Coachella) extends the cap and trade program until 2030 and will provide protection for food processors, energy and fuel sectors of the California economy. Among the 30 pages of legislative changes is a suspension of the State Responsibility Area (SRA) fee as of July 1, 2017, until January 1, 2031. Since July 1, 2014, the SRA fee has been levied at the rate of \$152.33 per habitable structure with a \$35/habitable structure for those within the boundaries of a local fire protection agency. There is also an extension of the Manufacturing Sales and Use Tax Exemption that includes an exemption for R&D equipment purchases from 2022 to 2030 which will now also benefit food processing facilities.

The second bill, [AB 617](#) (Cristina Garcia, D-Bell Gardens) is an air monitoring and emissions reduction measure that is aimed towards the stationary sources that are covered under the state's GHG program, emit more than 250 tons of any nonattainment pollutant or precursor or that receive a score from an existing state air quality program that prioritizes stationary sources for cancer or noncancer health impacts. AB 617 requires these stationary sources to do more emissions reporting; requires the air districts to determine the need for an expedited schedule to implement best achievable retrofit control technology (BARCT) and for CARB to establish a clearinghouse of information on best achievable control technology and BARCT; increases penalties for certain types of emissions and creates community emissions reduction programs for those areas exposed to criteria pollutants and toxic air contaminants.

An agricultural coalition, including Farm Bureau, Western Growers, the Agricultural Council and others, has been in discussions on both bills with the administration and legislators throughout the week making specific funding incentive requests for production agriculture, dairies and food processors that will help

them comply with current air quality and GHG regulations. When testifying in the Senate Environmental Quality Committee, Farm Bureau, as did other ag groups, stated that we are opposed unless AB 398 is amended to address our concerns.

Monday, July 17, is the rumored target date for voting on the measures, but at this point it is uncertain if that will happen due to anticipated legislative absences. Every vote will be needed to get to 2/3.

Commodities:

[AB 425](#) (Anna Caballero, D-Salinas) continues the efforts started by Doug LaMalfa and expanded last year by Assemblymember Dahle exempting forest fuel reduction projects meeting specified requirements from the requirement to obtain a Timber Harvest Permit. This bill would allow road building under specified conditions when using the exemption for fuel reduction projects. The Senate Appropriations Committee placed AB 425 on its suspense file this week, final decisions on the suspense file will happen in late August. Farm Bureau supports AB 425.

[AB 1126](#) (Committee on Agriculture) would allow the continued use of carbon monoxide to control burrowing rodent pests. In 2011, Farm Bureau sponsored legislation to legalize the use of carbon monoxide for rodent control. However, that bill included a sunset that eliminated the use January 1, 2018. AB 1126 originally would have extended the allowance indefinitely, however the Senate Environmental Quality Committee amended the bill to extend the sunset for five years. With that amendment, the bill was passed on consent by the Senate and Assembly with votes of 33-0 and 75-0 respectively and is on its way to the governor's desk for his decision. Farm Bureau is the sponsor of AB 1126.

Labor:

[AB 450](#) (David Chiu, D-San Francisco) requires employers to demand search warrants or subpoenas for ICE enforcement and to notify the Labor Commissioner and employees and their representatives about ICE enforcement and its results. The Senate Judiciary Committee recommended several amendments to the bill which the author agreed to take including allowing an employer to take an ICE agent to a non-public area away from workers to verify the agent's identity and the validity of any warrant the agent may have without violating AB 450's requirement to not permit access to non-public areas without a valid warrant. This is intended to minimize disruptions of business activities while the nature of the ICE enforcement is being confirmed. The requirement for employers to provide employees extensive personal written notification of an ICE enforcement action would be limited to allow an employer to provide a written notice by whatever means the employer normally communicates with employees (which could constitute a simple posting) and requires the Labor Commissioner to create a model notice. The notification time was lengthened for such notifications from 24 hours to 72 hours. The definition of "authorized representative" who must also be notified by the employer was limited to a collective bargaining representative if there is one.

AB 450 still requires an employer to insist on a subpoena to cooperate with an ICE I-9 audit, which will require an employer to break federal law to comply with state law since federal law requires an employer to turn over I-9s and related documents when demanded by ICE. Because of this federal/state conflict, the remaining requirements to notify the Labor Commissioner of ICE enforcement actions, and the fact that as of this writing the amendments described above have not appeared in print, Farm Bureau continues to oppose. The Senate Judiciary Committee approved AB 450 on a 5-2 vote and referred it to the Senate Appropriations Committee.

[AB 1008](#) (Kevin McCarty, D-Sacramento) was amended to allow an employer flexibility to avoid hiring a potentially dangerous former felon for sensitive jobs, and employers' groups including Farm Bureau are considering withdrawing opposition. AB 1008 was approved by the Senate Judiciary Committee 5-1 with one abstention and was referred to the Senate Appropriations Committee.

Natural Resources:

[SB 49](#) (Kevin De Leon, D-Los Angeles and Henry Stern, D-Canoga Park) would require California to enforce the federal Clean Air Act, Clean Water Act, Endangered Species Act (ESA), and their implementing regulations and policies as were in place on January 1, 2016 or January 1, 2017, whichever version is the most stringent. Additionally, the bill would create a private right of action in state law for citizen enforcement of the Clean Air Act, Clean Water Act, and ESA if the citizen suit provisions are removed from these federal laws. Specific to the Clean Water Act provisions, SB 49 requires the State Water Resources Control Board to ensure that all waste discharge requirements, permits issued, and water quality control plans adopted after January 1, 2018 to be at least as protective of the environment and public health as federal standards in place as of January 1, 2016, or 2017. SB 49 also would add all species native to California that are listed under the federal ESA to the list of species protected by the California Endangered Species Act.

SB 49 was heard in the Assembly Natural Resources and Judiciary Committees this week. Both committees proposed amendments, which were accepted, to narrow the bill and address some of the liability concerns created for state agencies under the bill. Even with the amendments, Farm Bureau remains opposed to SB 49. The bill passed out of the Natural Resources Committee on a party line vote of 7-3 and the Judiciary Committee with an 8-3 vote. The bill now goes to the Appropriations Committee.

[SB 473](#) (Robert Hertzberg, D-Van Nuys) would make several changes to the California Endangered Species Act (CESA). The bill initially included changes that were both positive and negative adjustments to the effects CESA has on Farm Bureau members. However, recent amendments eliminated all the positive amendments and left only problematic changes. One provision would prohibit the issuance of regulations to allow take for candidate species if allowing take would jeopardize the continued existence of the species. It would be nearly impossible to make this determination, because while a species is designated as a candidate, DFW is gathering data and reviewing the status of the species. Without a clear scientific understanding of the status of a species it would be nearly impossible to determine whether an action could jeopardize a species; meaning that allowing take would always be subject to litigation questioning whether jeopardy was occurring.

Farm Bureau is opposed to SB 473 unless it is amended to address our concerns and we are working with the author to ensure that happens. SB 473 passed out of the Assembly Water, Parks, and Wildlife Committee this week with an 8-6 vote.

Transportation:

[SB 158](#) (Bill Monning, D-Carmel), mentioned in last week's Friday Review, is a measure that provides that an individual shall not be issued a commercial driver's license until he or she has passed a written and driving test that complies with both the minimum federal standards and additional requirements established by this bill. Those additional requirements would include new entry level requirements for drivers to be determined by the Department of Motor Vehicles (DMV) as well as new behind the wheel training requirements.

Under the provisions of the bill in order to obtain a Class A commercial driver's license (CDL) one would have to have a minimum of 15 hours of behind-the-wheel (BTW) training (previous version of the bill would have required 30 hours of BTW). Those seeking a Class B license would also have to have 15 hours of BTW at least 7 hours of which would have to be on a public roadway.

We mentioned last week that Farm Bureau had been opposing this measure and had been working in concert with the California Cattlemen's Association (CCA) to secure amendments to exempt agriculture from the new training provisions since the new federal rules include an exemption for agriculture under certain conditions. Assembly Transportation Committee Chairman Jim Frazier (D-Discovery Bay) was instrumental in us being able to get the exemption language in the bill and we are grateful to him for assisting in this effort and we also appreciate Senator Monning's willingness to work with us on this effort. The amended bill was heard in the Assembly Transportation Committee this week and passed on a 14-0 vote. The exemption for agriculture includes farmers, their employees and family members driving vehicles used to transport agricultural products, farm machinery, farm supplies to or from farms as long as the carriage is not for-hire and the carriage is within 150 air miles of the farmer's farm. The bill now goes to the Assembly Appropriations Committee. Farm Bureau is in support of the bill as amended.

Water:

[AB 313](#) (Adam Gray, D-Merced) would establish a division of water rights within the Office of Administrative Hearings (OAH). Complaints against persons violating provisions of their water diversions would be heard by an administrative law judge in OAH, however decisions would not be final until accepted by the State Water Resources Control Board. The measure was amended this week removing the State Water Board's executive director as having final decision authority and placing that authority with the State Water Board itself. The Senate Judiciary Committee approved on a 4-1-2 vote. Farm Bureau supports.

[AB 589](#) (Frank Bigelow, R-O'Neals) would authorize those who divert more than 100 acre feet of water per year to certify their water measuring devices are installed and operating properly if they take a course taught by the University of California Cooperative Extension. Current law requires those individuals to have devices installed and certified by an engineer, contractor, or license professional at considerable cost. The measure passed out of the Senate Natural Resources and Water Committee on consent this week. Farm Bureau supports.

[AB 1420](#) (Cecilia Aguiar-Curry, D-Winters) would streamline the State Water Resources Control Board permitting process for farmers applying to divert water into a small irrigation pond. The measure would require the State Water Board to give priority to adopting general conditions for water diversions to small irrigation ponds during periods of high streamflow in exchange for reduced diversions during periods of low streamflow. Additionally, AB 1420 exempts registrations from the lake or streambed alteration program if the Department of Fish and Wildlife has provided conditions on the approved registration. The measure was placed on the Senate Appropriations Committee suspense file this week. All measures on the suspense calendar will be heard later this session. Farm Bureau supports.

[AB 1667](#) (Laura Friedman, D-Glendale) would increase agricultural water management planning requirements beyond those imposed last year by the Governor's Executive Order B-37-16. The measure was amended to address significant concerns raised by a large agricultural coalition, thus removing opposition, however the measure was held in the Senate Natural Resources and Water Committee this week.

[SB 252](#) (Bill Dodd, D-Napa) would require new water well permit applicants in critically overdrafted groundwater basins to provide their application information to neighbors. It would require cities and counties overlying critically over drafted basins to publicly notice new well permit applications and require these cities and counties to make specific new well permit information available to groundwater sustainability agencies. The measure was amended in the Assembly Local Government Committee this week to address Farm Bureau and other agricultural organizations remaining concerns with public notification requirements and that the measure interfered with SGMA local control. The Assembly Local Government Committee approved SB 252 along party lines, 6-3. With these latest amendments, Farm Bureau removed opposition.

[SB 623](#) (Bill Monning, D-Carmel) would establish the Safe and Affordable Drinking Water Fund and insure that monies in the fund are continuously appropriated to the State Water Resources Control Board to provide water to those whose drinking water exceeds the drinking water standard. The measure was amended last week identifying agricultural operations as a funding source for the Safe and Affordable Drinking Water Fund to assist in providing emergency, interim, and long-term assistance to community water systems and individual domestic well users whose wells have been impacted by nitrate contamination and whose wells are located in agricultural areas. Additionally, the measure would require the State Water Resources Control Board to promulgate regulations requiring individual domestic well owners to test their water supply wells for contamination. The Assembly Environmental Safety and Toxic Materials Committee approved SB 623 on a 5-1-1 vote. Farm Bureau expressed concerns regarding requirements on individual domestic well owners and the lack of a comprehensive funding solution addressing all contaminants.