

Date of Hearing: July 14, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION

Mike Gipson, Chair

SB 328 (Grayson) – As Amended June 25, 2025

Majority vote. Fiscal committee.

**SENATE VOTE:** 38-0

**SUBJECT:** Hazardous waste generation and handling fees: Department of Toxic Substances Control oversight responses: housing development projects.

**SUMMARY:** Caps the amount of the hazardous waste generation and handling fee paid by generators of hazardous waste if the hazardous waste is being removed from a project that is an infill housing project, as specified, and creates a process for an entity that is cleaning up a contaminated site that will be developed into a housing project to request information from the Department of Toxic Substances Control (DTSC) about the nature of the status of that cleanup. Specifically, **this bill:**

- 1) Caps the generation and handling fee imposed upon a generator of hazardous waste for an infill housing project that is at least 66% residential housing. The capped amount shall not exceed \$100,000 for waste generated each fiscal year for each project site.
- 2) Caps the generation and handling fee imposed upon a generator of hazardous waste that is a master development project. The capped amount shall not exceed \$250,000 for waste generated each fiscal year for each project site, without regard to the phase.
- 3) Provides that the reduced generation and handling fees in this bill only apply to generators that are not the "responsible party," as defined.
- 4) Requires a generator of hazardous waste seeking to apply the caps to the generation and handling fee authorized in this bill to submit an application and certify its eligibility to DTSC and include any information necessary to demonstrate its eligibility, including a copy of the approved entitlement from the applicable local government.
- 5) Provides that the cap for the generation and handling fee only applies to generation and handling fees imposed on or after January 1, 2026.
- 6) Requires DTSC, upon receipt of a request submitted to DTSC for a housing development project seeking oversight of investigation, characterization, and remediation activities (cleanup), to provide the requestor specified information, including, but not limited to, any additional information that may be required to begin to review the request.
- 7) Requires DTSC, for a housing development project with 25 or fewer units, to respond to the requestor of information on a cleanup site pursuant to the above, within 60 business days of receipt of the request.

- 8) Requires DTSC, for a housing development project with 26 units or more, to respond to the requestor of information on a cleanup site pursuant to the above, within 120 business days of receipt of the request.
- 9) Requires a person or entity requesting information about a cleanup project under this bill to provide any information they may have about the history of the site being cleaned up, including any information about past ownership of the property, to DTSC.
- 10) Defines "Sixty-six percent residential housing" as a multifamily housing development project in an infill setting that is surrounded on at least three sides by urbanized uses and of which at least two-thirds of the proposed square footage is dedicated to residential use.
- 11) Defines "master development project" as a project that complies with all of the following criteria: the project is governed by a development agreement entered into pursuant to existing law; the project explicitly contemplates development in multiple phases; the project requires construction of new infrastructure; and, the project includes residential dwelling units.

#### **EXISTING LAW:**

- 1) Authorizes DTSC to regulate the management of hazardous wastes in California pursuant to the Hazardous Waste Control Law (HWCL). (Health and Safety Code (HSC) Section 25100 *et seq.*)
- 2) Establishes, pursuant to the Carpenter-Presley-Tanner Hazardous Substance Account Act (HSAA), a program to provide for response authority for releases of hazardous substances, including spills and hazardous waste disposal sites that pose a threat to public health or the environment. (HSC Section 78000 *et seq.*)
- 3) Requires a generator of hazardous waste to pay a generation and handling fee, if they generate an amount equal to, or more than, five tons in a calendar year, equal to \$49.25 for each ton or fraction of a ton of hazardous waste generated in a calendar year. (HSC Section 25205.5)
- 4) Requires the Board of Environmental Safety (Board) to establish, by regulation, a schedule of rates for the generation and handling fee authorized by the HWCL and allows the Board to adjust the schedule of rates no more frequently than once per year thereafter and no later than October 1 of any year in which the Board adopts the schedule of rates. Requires rates to allow for a reserve in the Hazardous Waste Control Account each year at an amount determined by the Board to be sufficient to ensure that all programs funded by the Hazardous Waste Control Account will not be adversely affected by any revenue shortfalls or additional baseline expenditure adjustments, but not to exceed 10% of authorized expenditure levels. Provides that the rate established by the Board shall not exceed \$98.50. (HSC Section 25205.5.01)
- 5) Requires every person who is subject to the reduced fee amount pursuant to HSC Section 25205.5 to register with the California Department of Tax and Fee Administration (CDTFA). (Revenue and Taxation Code (R&TC) Section 43101.1.)

**FISCAL EFFECT:** According to the CDTFA, this bill would likely cause a revenue loss of an unknown, but potentially significant, amount. By capping the hazardous waste generation and handling fee, this bill is estimated to result in a revenue loss in excess of \$150,000.

**COMMENTS:**

- 1) The author has provided the following statement in support of this bill:

California is in the midst of a massive housing affordability crisis. Rising costs and high fees have made it difficult to build housing that is affordable. In recent years, certain developers have experienced sharp cost increases, due to how the hazardous waste generator fee was restructured by SB 158 in 2021. Instead of a tiered system, SB 158 replaced this model with a fixed \$46.20 per ton fee. This caused many projects to experience cost overruns, including some projects that were already completed.

To help reduce the cost of development, SB 328 would place a cap on the Hazardous Waste Generator Fee. This cap would apply to housing, infill, non-profit, and park and open space projects that did not create the contamination. The cap for most projects would be set at \$100,000 and \$250,000 for master developed projects. This bill will help reduce costs and help projects better "pencil out", at a time when costs are rapidly increasing. Builders should not be penalized for opening up land for productive use, especially when they are cleaning up pollution instead of creating it.

- 2) Writing in support of this bill, the California Housing Consortium notes, in part:

Recent changes to the Hazardous Waste Generator fee have significantly increased the cost of remediating contaminated soil for housing as project sites are prepared for development. The fee penalizes home builders who attempt to open up land for productive use, such as housing development. These fees are imposed at a time where rising costs have made it increasingly difficult to make affordable housing projects feasible due to the lack of funding needed to support these projects. SB 328 would provide a fair and balanced approach to funding DTSC's remediation efforts while still allowing critically needed affordable housing projects to move forward.

- 3) Writing in opposition to this bill, the California Council for Environmental and Economic Balance (CCEEB) notes, in part:

While CCEEB understands the author's intent to lower the costs for development projects, we are concerned SB 328 will result in a decrease in fee revenue to address DTSC's needs, cost structure, and ongoing fiscal challenges. In turn, DTSC and the BES will have to fill the gap associated with that loss in revenue by shifting the costs and raising fees even further on other generators who would be subsidizing the hazardous waste generated by developers. CCEEB and its members object to this cost shift that will result in compliant generators across many sectors – pharmaceutical, manufacturing, waste and recycling service providers, transportation, utilities, and more – having to bear added fiscal burden to subsidize decreased costs for development projects. This will only serve to further increase costs associated with manufacturing of products, waste and recycling services, energy projects, and more.

## 4) Committee Staff Comments:

- a) *Double referred*: In addition to this Committee, this bill was referred to the Assembly Committee on Environmental Safety and Toxic Materials, which passed this bill on July 1, 2025 on a vote of 7-to-0. For additional discussion regarding issues that fall under that Committee's jurisdiction, including a thorough summary of reforms to DTSC in recent years, please refer to that Committee's analysis.
- b) *Infill housing*: As noted by the author and supporters, the cost of housing is a major challenge facing California residents. Infill housing refers to the practice of developing vacant or underutilized parcels of land within existing urban or suburban areas. Rather than expanding outward onto undeveloped land, infill development concentrates on repurposing space in already built environments. This approach harnesses the existing infrastructure, such as roads and utilities, and aims to promote density, reduce commute times to job-centers, and turn blighted or abandoned parcels into useful spaces.

While infill housing may be attractive for the reasons listed above, it can also come with serious challenges relating to cleaning up a property and making it suitable for building. This is especially true when a parcel was previously used for industrial or other commercial purposes and then neglected or abandoned. Often referred to as "blight", these types of properties can be more than an eye-sore or a drag on nearby property values: they can actually pose ongoing threats to public health.<sup>1</sup> Thus, while there are challenges and costs associated with remediating a blighted property within an urban setting, proponents argue that remediating these sites and developing them into housing is better for public health than allowing them to remain untouched.

- c) *Polluter pays principle*: In a perfect world, the entity that created the hazardous waste would ultimately bear responsibility for paying the fees associated with cleanup. The more hazardous waste an entity generates, the more it should be required to pay in fees. This is commonly referred to as the polluter pays principle and both state and federal law provide some mechanisms to hold the original polluters liable for the costs of remediation. Unfortunately, however, it is not always possible to make the original polluter pay for the costs of cleanup, meaning that subsequent property owners ultimately become responsible for the hazardous waste because they are the ones removing contaminated material from the project site.
- d) *Brief history of DTSC's fiscal issues*: DTSC's funding comes primarily from the HWCA and Toxic Substances Control Account (TSCA). The HWCA is a repository for revenues from cost recovery activities and fees paid by various hazardous waste generators, transporters, and facilities. The HWCA funds DTSC's regulatory work overseeing hazardous waste management activities in the state. The TSCA is a repository for revenues from cost recovery, penalties, interest, and the Environmental Fee. TSCA funds DTSC's work dealing with cleaning up contaminated properties, including federal Superfund sites and state orphan sites, as well as funding the Safer Consumer Products Program (also known as the Green Chemistry Program).

---

<sup>1</sup> Zumwalt, McClellan: *From Polluted Air Base to Productive Business Park*, DTSC (December 2018). <https://dtsc.ca.gov/mcclellan-success/>.

The HWCA and TSCA had been operating with a structural deficit for several years. The Budget Act of 2019-2020 provided the HWCA with \$27.5 million from the General Fund to backfill the shortfall and maintain existing operations. The Governor's budget for 2020-2021 provided a \$12 million backfill from special funds for TSCA and a backfill of approximately \$19 million for the HWCA (also from special funds) as those accounts were projected to be insolvent in the budget year.

- e) *Recent reforms to hazardous waste fees:* To address longstanding fiscal challenges faced by DTSC, the Legislature passed and the Governor signed into law SB 158 (Senate Budget Committee), Chapter 73, Statutes of 2021. This budget trailer bill enacted several of the reforms advanced by Governor Newsom and was the result of years of negotiation between state leaders, environmental groups, and the business community. In addition to establishing the five-member Board with the ability to set fees and fee rates, SB 158 also enacted significant fee reform, which included repealing the Generator Fee and replacing it with the new Generation and Handling Fee. SB 158 also created a new (hazardous waste) facility fee and modified and raised the environmental fee. All fees were set at a rate that was projected to eliminate DTSC's operating deficit, provide revenue for anticipated needs in the near term, fund the Board and the development of a hazardous waste management plan, and provide DTSC with a prudent reserve.

Beginning January 1, 2022 and for the 2022-23 fiscal year, SB 158 set the generation and handling fee at \$49.25 for each ton or fraction of one ton of hazardous waste that was generated in the 2021 calendar year. Additionally, SB 158 provided that, commencing July 1, 2023, the fee rate would be established through regulations adopted by the Board. Prior to SB 158, the hazardous waste fee operated on a tiered structure based on the amount of hazardous waste generated.

- f) *Reduced fee amounts for certain projects:* SB 143 (Senate Budget Committee), Chapter 196, Statutes of 2023, created a reduced generation and handling fee of \$5.72 per ton for projects that meet all of the following requirements:
  - i) The project is certified by the Governor as an environmental leadership development project pursuant to Public Resources Code Section 21183;
  - ii) The project provides at least 2,000 new housing units and is legally obligated to produce a minimum amount of required affordable housing units, including via in-lieu fees; and,
  - iii) The generator of the hazardous waste acquired ownership of the property from which the hazardous waste was generated prior to July 1, 2022, and commenced the cleanup activity of hazardous waste that is non-RCRA hazardous waste before July 1, 2022.

The Governor's Office of Land Use and Climate Innovation (formerly known as the Office of Planning and Research) maintains a webpage for Environmental Leadership Development Projects.<sup>2</sup> The total number of projects, however, that have qualified for the reduced fee amount of \$5.72 per ton of hazardous waste pursuant to SB 143 is unclear.

---

<sup>2</sup> <https://lci.ca.gov/ceqa/judicial-streamlining/>

- g) *Lower-Than-Projected Generation and Handling Fee Revenues Reestablished HWCA Deficit in 2022-23.* During the enactment of SB 158, the new generation and handling fee was set at \$49.25 per ton and was projected to generate approximately \$81 million in total revenues in 2022-23. However, in the middle of 2022-23, DTSC indicated that these revenues were coming in significantly below what had been anticipated and would only generate about \$40 million that year. The lower-than-projected revenues reestablished the structural deficit within HWCA in 2022-23 and set the fund on a path to insolvency in 2023-24. The department's preliminary analysis of the issue indicated the shortfalls were attributable to a combination of three primary factors: (1) a reduction in the amount of hazardous waste generated; (2) a higher utilization of government fee exemptions, such as related to a government entity removing or remediating hazardous waste caused by another entity; and, (3) nonpayment or low payment of fee amounts owed.
- h) *CDTFA's role:* The CDTFA administers the hazardous waste fee programs in cooperation with DTSC pursuant to the requirements of the California Hazardous Substances Tax Law. Any person that generates five tons or more of hazardous waste at a site located in California within one calendar year is required to register with the CDTFA. Beginning January 1, 2022, all generation and handling fee accounts are required to make one prepayment, which is due and payable on or before November 30th each year. The annual return and final payment are due on February 28 of each year. The prepayment must be equal to 50% of the total amount due for the hazardous waste generation and handling fee for the entire prior calendar year. The penalty for filing a late return and/or late fee payment, including prepayment, is 10% of the fee amount due for the period and interest also applies to late fee payments.
- i) *This bill:* This bill caps the amount of the generation and handling fee paid by generators of hazardous waste if the project is an infill housing project with at least 66% residential housing or a master development project. Additionally, the bill sets up a process for an entity that is cleaning up a contaminated site that will be developed into a housing project to request information from DTSC about the nature of the status of the cleanup. While DTSC is currently required to post detailed information on cleanups on its internet website, additionally providing this information to developers of certain housing projects could also be helpful. This bill will result in lower fees to developers of specified housing projects, however, it will also likely result in increased fees for other entities that do not benefit from a fee cap or exemption.
- j) *Prior legislation:*
- i) AB 2686 (Grayson), of the 2023-24 Legislative Session, would have created a reduced hazardous waste generation and handling fee at \$5.72 a ton for specified projects, including those proposing to build affordable housing, if the hazardous waste meets specified conditions, and only for hazardous waste generated in calendar years 2021, 2022, and 2023. AB 2686 was held on this Committee's Suspense File.
  - ii) SB 143 (Committee on Budget), Chapter 196, Statutes of 2023, created a reduced generation and handling fee of \$5.72 a ton for projects that meet specified criteria including being certified by the Governor as an environmental leadership development project.

- iii) SB 158 (Committee on Budget), Chapter 73, Statutes of 2021, established the five-member Board; revised, recast and increased hazardous waste fees; made changes to DTSC financial assurance requirements for hazardous waste facilities and cleanup sites; and made improvements to the permitting of hazardous waste facilities.

**REGISTERED SUPPORT / OPPOSITION:****Support**

Abundant Housing LA  
Bay Area Council  
California Apartment Association  
California Housing Consortium  
Circulate San Diego  
City of Vernon  
Inner City Law Center  
Institute for Responsive Government Action  
The Two Hundred

**Opposition**

Communities for a Better Environment  
Physicians for Social Responsibility - Los Angeles

**Analysis Prepared by:** Wesley Whitaker / REV. & TAX. / (916) 319-2098