

Date of Hearing: August 20, 2025

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

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

Policy Committee:	Environmental Safety and Toxic Materials	Vote:	7 - 0
	Revenue and Taxation		7 - 0

Urgency: No                      State Mandated Local Program: No                      Reimbursable: No

**SUMMARY:**

This bill caps the generation and handling (GH) fee for certain infill housing and master development projects and creates a process for an entity 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 status of the cleanup.

Specifically, this bill, among other things:

- 1) Effective July 1, 2028, requires DTSC, upon receipt of an entity's request that DTSC oversee the investigation, characterization, and remediation activities (cleanup) of a housing development project, to provide the requesting entity with certain information, and according to certain timelines, and requires the requesting entity to provide DTSC any information the entity has regarding the history project site, including any information about past ownership.
- 2) Caps the GH fee imposed upon a generator of hazardous waste after December 31, 2025, for waste generated each fiscal year (FY) for each project site, as follows: (a) for a generator that is infill housing that is at least 66% residential, as defined, at no more than \$100,000, and (b) for a generator that is a master development project, as defined, at no more than \$250,000, without regard to the phase.
- 3) Requires a generator seeking a fee limitation to submit an application and certify its eligibility to DTSC and include any information necessary to demonstrate its eligibility.
- 4) Requires DTSC to notify the California Department of Tax and Fee Administration (CDTFA) of generators certifying eligibility for a fee limitation.

For a more detailed summary of this bill's provisions, please see the Assembly Environmental Safety and Toxic Materials Committee's analysis.

**FISCAL EFFECT:**

*GH fee cap:*

- 1) While it is difficult to predict the number of projects that would qualify for the fee cap every year, DTSC notes this bill could apply to most, if not all, hazardous waste generated by housing-related construction projects.

Historically, the total tonnage of hazardous waste generated in any year has varied by approximately 200,000 tons with the largest deviations due to construction-related activities and changes in economic growth. In prosperous years, construction-related waste has comprised up to 50% of the total annual tonnage, whereas in economic downturns, construction-related hazardous waste has comprised only about 20% of the total. This high variability hinders DTSC's ability to accurately forecast how much hazardous waste would be subject to the proposed fee caps in any given year.

Nevertheless, the department estimates an annual revenue loss of between \$10 million and \$20 million (Hazardous Waste Control Account (HWCA)). However, the actual amount may be higher or lower than this range in any given year. DTSC notes this reduction in GH fee revenue will further exacerbate the ongoing structural deficit in the HWCA and likely require its Board of Environmental Safety (BES) to increase the fee rate to a level sufficient to sustain a solvent fund balance – potentially to the current regulatory cap of \$101.75 per ton. Absent a sufficient rate increase, DTSC would need a loan or backfill from the General Fund, or a special fund related to brownfield cleanups for infill housing or other developments, to close the remaining funding gap.

- 2) DTSC will likely incur one-time costs of an unknown amount, potentially in the low hundreds of thousands of dollars, to adopt regulations to implement the required application and certification process, revise reporting requirements for the hazardous waste generators affected by this bill, and reprogram its Electronic Verification Questionnaire system accordingly (HWCA).
- 3) DTSC notes it would need to augment its interagency contract – which it estimates would cost approximately \$500,000 one-time – with the California Department of Tax and Fee Administration (CDTFA) to update CDTFA's fee collection system to accommodate the special fee cap and include the project types named in the bill in CDTFA's audit selection process.
- 4) CDTFA estimates costs of approximately \$270,000 in FY 2025-26 and \$29,000 in FY 2026-27 and ongoing to modify returns, reprogram computer systems, notify the public, answer questions, and handle increased audit and compliance activities (HWCA).

*Application review:*

DTSC will incur ongoing costs of an unknown, but potentially significant, amount, potentially in the hundreds of thousands to low millions of dollars annually, to review requests and applications related to cleaning up contaminated sites within specified expedited timelines.

For its part, DTSC notes the timelines and scope of review required by the bill are infeasible and beyond the department's existing capacity. For context, DTSC's current streamlined review process is approximately 12 to 18 months due to site-specific complexities. Further, the department is anticipating an influx of post-entitlement permits for work related to the recent fires in Los Angeles as well as future wildfire recovery efforts. DTSC estimates ongoing annual costs of approximately \$3.5 million to hire 16 staff (including staff with expertise in engineering, toxicology, and geology) to implement this section of the bill. DTSC's costs to oversee these development projects will be borne by a combination of reimbursements and the Toxic Substances Control Account (TSCA). If DTSC's costs are not fully reimbursed, it may need to raise the Environmental Fee.

**COMMENTS:**1) **Purpose.** According to the author:

California is in the midst of a massive housing affordability crisis...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...Builders should not be penalized for opening up land for productive use, especially when they are cleaning up pollution instead of creating it.

2) **Background.** According to the Legislative Analyst's Office (LAO), HWCA primarily supports activities that DTSC conducts related to regulating the generation, storage, transportation, and disposal of hazardous waste through permitting, compliance monitoring, and enforcement of noncompliance. SB 158 (Committee on Budget and Fiscal Review), Chapter 73, Statutes of 2021, restructured and increased the charges that support DTSC's two major fund sources: HWCA and TSCA. The resulting revenues were to (a) solve longstanding structural deficits in HWCA and TSCA, (b) support a new BES, (c) support programmatic expansions that would better enable DTSC to protect people and the environment from toxic substances, and (d) build sufficient reserves in both accounts. For HWCA specifically, SB 158 replaced several prior fees with a new GH fee and also increased existing facility fees. While the legislation was enacted as part of the 2021-22 budget package, the state did not begin to receive additional revenues until 2022-23 due to the timing of how charges for both accounts are collected.

Funding for HWCA primarily comes from the GH fee and facility fees. The GH fee is charged on a per-ton basis to each entity that generates five or more tons of hazardous waste in a calendar year. Facility fees are annual charges levied on permitted facilities that treat, store, or dispose of hazardous waste. The initial GH fee was set at \$49.25 per ton (previously it ranged from \$10 to 100 per ton) though DTSC's BES is authorized to increase the fee under certain circumstances. The current statutory fees on generators of hazardous waste, as required by SB 158, follow the polluter pays principle: the more hazardous waste someone generates, the more hazardous waste fees they pay.

By January 2024, DTSC indicated HWCA was in the red to the tune of \$21 million. The LAO attributed the shortfall to the new \$49.25 per-ton fee bringing in less than half of the money SB 158 had anticipated. DTSC submitted a proposal to the Office of Administrative Law (OAL) in late 2024 to set new fee rates for the 2024-25 fiscal year and to adjust the fee rate limits in accordance with the consumer price increase set by the Department of Industrial Relations for June 2023 to June 2024. This proposal sought to hike the GH fee from \$49.25 per ton fee to \$60.05 per ton, an increase of approximately 22%. OAL approved the regulatory proposal on January 27, 2025, and the new fee amount took effect immediately. According to information DTSC provided to the Senate Budget Committee, HWCA's budget galley shows revenues growing from \$66.3 million in 2023-24 to \$84.5 million in 2024-25.

Overall, DTSC is seeing a substantial increase in fee revenues collected to date compared to last year, roughly \$11 million more.

Writing in support of this bill, the California Home Building Alliance (HBA) argues the price-per-ton GH fee has “significantly increased the cost of remediating contaminated soil for housing projects as they prepare a site for development,” which HBA argues has had a “disproportionate impact on infill housing developments, which are more likely to develop on “contaminated” urban sites.” Habitat for Humanity Greater San Francisco notes that DTSC “does not play a role in removing contaminated soil from these sites beyond certifying that the contaminated soil is disposed in a safe and legal manner - developers are the ones who conduct and pay for this remediation work.”

Writing in opposition to this bill, the California Council for Environmental & Economic Balance (CCEEB) writes:

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.

Communities for a Better Environment and Physicians for Social Responsibility - Los Angeles write in opposition:

Recently, funding was revoked for the Cleanup in Vulnerable Communities Initiative and the Equitable Community Revitalization Grant program—both programs were created to clean up and uplift communities affected by hazardous waste contamination. This bill would further limit resources necessary to address hazardous waste and contaminated sites, leaving residents with continued health burdens for the purpose of maximizing profits for developers.

The Department of Finance is opposed to this bill, stating it creates “new special fund costs not included in the 2025 Budget Act and exacerbates the structural imbalance in HWCA by limiting the total fees that can be assessed to certain generators of hazardous waste.”

- 3) **Related Legislation.** AB 1031 (Jeff Gonzalez) sets the maximum GH fee for geothermal waste at \$10 a ton. AB 1031 was held on this committee’s suspense file.

SB 819 (Padilla) requires DTSC to conduct a study on geothermal waste, GH fees, and fee exemptions. SB 819 was held on the Senate Appropriations Committee’s suspense file.