



Solano County

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Legislation Text

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Receive an update from staff and the County's State Legislative Advocate on the Governor's State Budget May Revision; and Consider taking a position on AB 2606, AB 2073, AB 2074, and AB 2995 which were reviewed by the County's Legislative Committee on May 7, 2018 and referred to the full Board for consideration

Published Notice Required? Yes _____ No X
Public Hearing Required? Yes _____ No X

DEPARTMENTAL RECOMMENDATION:

It is recommended that the Board of Supervisors Receive an update from staff and the County's State Legislative Advocate on the Governor's State Budget May Revision; and Consider taking a position on AB 2606, AB 2073, AB 2074, and AB 2995 which were reviewed by the County's Legislative Committee on May 7, 2018 and referred to the full Board for consideration.

SUMMARY:

Staff will provide an overview of legislation considered by the Board's Legislative Committee on May 7, 2018. The County's Legislative Advocate, Karen Lange of Shaw/Yoder/Antwih, Inc., will provide a verbal update on developments at the Capitol and key legislation of interest to the County. Due to the unexpected absence of one Legislative Committee member, action items were referred to the full Board for consideration and are discussed individually in the discussion section below.

FINANCIAL IMPACT:

The legislative program is designed to result in additional funding and cost avoidance relative to Solano County. The cost of preparing this report and compiling the information is a General Fund cost covered in the County Administrator's FY2017/18 Adopted Budget.

DISCUSSION:

The County's Legislative Committee Members convened on May 7, 2018 to discuss both Federal and State issues. Joe Krahn and Hasan Sarsour of Paragon Government Relations, the County Federal advocacy team and Karen Lange of Shaw/Yoder/Antwih Inc., the County's State legislative advocate participated in the meeting as well.

The County's May 7, 2018 Legislative Committee agenda included a Federal update from Paragon Government Relations, a summary of which is included in Attachment A. The State advocate, Karen Lange will provide a verbal update at the Board meeting. Also on the agenda were four State legislative bills, AB 2606, AB 2073, AB 2074, and AB 2995, each of which is discussed individually below.

Link to [May 7, 2018 Legislative Committee Agenda Packet](http://www.solanocounty.com/civicax/filebank/blobdload.aspx?BlobID=28497)
<<http://www.solanocounty.com/civicax/filebank/blobdload.aspx?BlobID=28497>>

Summary of legislative action considered by the Legislative Committee

(Listed in order of the May 7, 2018 Legislative Committee Agenda Action Items)

AB 2606 (Fong) Hazardous waste: facilities: permits: renewals

Existing law, as part of the hazardous waste control law, requires a facility handling hazardous waste to apply for and obtain a hazardous waste facilities permit from the Department of Toxic Substances Control. Existing law requires that a hazardous waste facilities permit be for a fixed term not to exceed 10 years for certain facilities. Existing law requires the owner or operator of a facility intending to extend the facility's permit to submit a complete Part A application for a permit renewal before the fixed term of the permit expires and, at any time following the submittal of the Part A application, to submit a complete Part B application, or any portion of that application, and other relevant information, if requested by the department. Existing law requires a person, who applies for, or requests, a renewal of an existing hazardous waste facilities permit to enter into a written agreement with the department pursuant to which that person is required to reimburse the department for the costs incurred by the department in processing the renewal application.

This bill would require the department to process a hazardous waste facilities permit renewal application in an expedited manner, as provided, if the department determines that certain conditions are met, including that operations at the hazardous waste facility have not changed significantly since the approval of the permit in effect at the time the renewal application is submitted. The bill would provide that the expedited permit renewal process is not available for land disposal facilities. The bill would impose a maximum on the amount of reimbursement to the department for the costs incurred by the department in processing a hazardous waste facilities permit renewal application through the expedited permit renewal process added by this bill in the amount of \$200,000 for large storage facilities and large treatment facilities or \$100,000 for all other hazardous waste facilities.

Staff worked with David Bell, AF Regional Environmental Coordinator (REC) - California, Acting Legislative & Regulatory Engagement Division, Western Branch at Travis AFB who has confirmed they are also actively working on supporting this bill at the state Capitol. The bill would expedite renewal permits and save the Base over \$200,000 in permit costs by capping the cost at \$100,000.

Staff recommends a SUPPORT position on AB 2606.

AB 2073 (Chiu) Public nuisance: abatement: lead-based paint

Existing law defines a nuisance as one that affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and provides that a public nuisance may be remedied by an indictment or information, a civil action, or abatement.

This bill would make any property owner, or agent thereof, who participates in a program to abate lead-based paint created as a result of a judgment or settlement in any public nuisance or similar litigation immune from liability in any lawsuit seeking to recover inspection, abatement, or any other costs associated with that abatement program and the activities conducted pursuant to that abatement program.

During the discussion at the Legislative Committee meeting it was noted that the lead paint companies could potentially sue homeowners who participate in the abatement program created by the judgment in People v. ConAgra Grocery Products Co. This bill would immunize any property owner from liability in a lawsuit seeking to recover the costs associated with participation in the abatement program. It is necessary to implement the landmark legal judgment effectively and to maximize use of the program.

Staff, with the concurrence of County Counsel, recommends a SUPPORT position on AB 2073.

AB 2074 (Bonta) Damages: lead-based paint

Existing law authorizes a person who suffers a loss or harm to person or property from the unlawful act or omission of another to recover from the person at fault money damages.

This bill would allow the injured party, in any action to recover damages for injury to person or property caused by lead-based paint, to establish a prima facie case that a particular party is the cause of the injury if the injured party proves by a preponderance of the evidence that a particular party produced, sold, distributed, or promoted the type of lead paint pigment that caused the injury, and would shift the burden of proof to that particular party to prove by a preponderance of the evidence that it did not produce, sell, distribute, or promote the lead paint pigment during the relevant time period or in the geographical market in which the injury occurred. The bill would make each party jointly and severally liable if more than one party that produced, sold, distributed or promoted lead paint pigments is found liable for an injury to person or property caused by lead-based paint.

During the discussion at the Legislative Committee meeting it was noted that this is an example of economic legislation and the legal concept of burden shifting in special circumstances. This bill removes a significant hurdle to holding lead paint companies legally accountable for injuries caused by lead-based paint. It implements a "risk contribution" theory of liability which improves the ability of children to recover damages from known responsible defendants. While technical in nature, it is simple in application: an injured party may establish a legally sufficient case of causation if it proves by a preponderance of the evidence that a particular party produced, sold, distributed or promoted the type of lead paint that caused the injury. The burden of proof then shifts to the particular party that produced, sold, distributed or promoted the type of lead paint to prove by a preponderance of the evidence that it did not produce, sell, distribute or promote the lead based paint during the relevant time or in the geographical market in which the injury occurred. Moreover, the bill holds multiple companies jointly and severally liable if there were other companies producing, selling, distributing or promoting paint at that time and area.

Staff recommends a SUPPORT position on AB 2074.

AB 2995 (Carrillo) Civil actions: injury to property: lead-based paint

Existing law provides that an injury to property consists in depriving its owner of the benefit of it, which is done by taking, withholding, deteriorating, or destroying it. Existing law requires an action seeking relief based on an injury to property to be commenced within 3 years after the time that the cause of action has accrued.

This bill would provide that the presence of lead paint on the surfaces of a residence or other building constitutes a physical injury to property. The bill would provide that an action to recover damages for that injury would not accrue until three years from the date the aggrieved party has actual knowledge of the presence of lead-based paint in or on that property, as specified. This bill would provide that the presence of lead paint on the surfaces of a residence or other building constitutes a physical injury to property. The bill would provide that an action to recover damages for that injury would not accrue until three years from the date the aggrieved party has actual knowledge of the presence of lead-based paint in or on that property, as specified.

During the discussion at the Legislative Committee meeting it was noted that similar to AB 2074, this bill assists homeowners in taking advantage of the remedies offered by the lead paint judgment. The abatement program is limited to the removal of lead based paint from the interior of the property. This bill classifies the presence of lead-based paint as a physical injury to the property, which enables the property owner to sue for the cost of abating or removing lead paint in or on the property. More important, the bill establishes a 3-year statute of limitations from the date the property owner has actual knowledge of the presence of lead-based paint. The receipt or knowledge of real estate

disclosures that residences built before 1978 are presumed to contain lead-based paint are not alone sufficient to establish actual knowledge.

Staff recommends a SUPPORT position on AB 2995.