

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 642 (Cortese)

Version: February 16, 2023

Hearing Date: April 11, 2023

Fiscal: No

Urgency: No

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**SUBJECT**

Hazardous materials: enforcement: county counsel

**DIGEST**

This bill extends enforcement authority to the county counsel for violations of various laws governing hazardous materials.

**EXECUTIVE SUMMARY**

The Hazardous Waste Control law (HWCL) establishes the state's program that implements and enforces federal hazardous waste law in California and empowers the Department of Toxic Substances Control (DTSC) to oversee and implement that law. This includes guidelines for who can store, treat, or dispose of hazardous waste and covers the entire management of hazardous waste, from the point the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federal authorized facility.

The law provides for criminal and civil penalties for noncompliance. The HWCL authorizes the city attorney, district attorney, and the Attorney General, at the request of DTSC or a CUPA, to bring an action seeking to enjoin a violation of laws and regulations governing the generation, transportation, and disposal of hazardous materials. The legislation that extended this authority to county counsel failed to extend it to other laws in the hazardous materials context. Therefore, county counsel are not authorized to bring civil actions to enforce provisions governing the Hazardous Materials Business Plan Program, the Underground Storage Tank Program, the Aboveground Petroleum Storage Act Program, and the Medical Waste program. This bill makes enforcement uniform throughout this area of the law, by extending civil enforcement authority over hazardous waste violations to county counsel.

The bill is co-sponsored by the County of Santa Clara, the Rural County Representatives of California, and the California State Association of Counties. It is supported by

various groups, including California Environmental Voters and the Center on Race, Poverty, and the Environment. It is opposed by the California District Attorneys Association. This bill passed out of the Senate Environmental Quality Committee on a vote of 5-0.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the Hazardous Waste Control Law, which regulates the generation, transportation, and disposal of hazardous materials. (Health and Saf. Code § 25100 et seq.)
- 2) Specifies that every civil action brought at the request of Department of Toxic Substances Control (DTSC) or a certified unified program agency (CUPA) is to be brought by the city attorney, *the county attorney*, the district attorney, or the Attorney General in the name of the people of the State of California and that those actions relating to the same processing or disposal of hazardous waste may be joined or consolidated. (Health and Saf. Code § 25182.)
- 3) Authorizes the city attorney, district attorney, and the Attorney General, at the request of DTSC or a CUPA, to bring an action seeking to enjoin a violation of laws and regulations governing the generation, transportation, and disposal of hazardous materials. (Health and Saf. Code § 25181.)
- 4) Requires certain businesses that handle hazardous materials to prepare a business and area plan relating to the handling and release or threatened release of hazardous materials and authorizes the city attorney, district attorney, and Attorney General to bring an action to enforce these requirements. (Health and Saf. Code §§ 25500 -25519.)
- 5) Regulates the operation of underground storage tanks and authorizes the city attorney, district attorney, and the Attorney General to bring an action to enforce these requirements. (Health and Saf. Code §§ 25280- 25299.)

This bill additionally authorizes county counsel to enforce the above laws.

## COMMENTS

### 1. Protecting Californians from hazardous waste

One critical statutory framework for protecting public health from hazardous materials is the Hazardous Waste Control law (HWCL).<sup>1</sup> The stated findings of the law indicate it was created in response to increasing quantities of hazardous wastes being generated in the state, which leads to long-term threats to public health and to air and water quality and creates immense costs for the state as a result of improper hazardous waste handling and disposal practices. Therefore, in order to protect the public health and the environment and to conserve natural resources, the Legislature found it was in the public interest to establish regulations and incentives which ensure that the generators of hazardous waste employ technology and management practices for the safe handling, treatment, recycling, and destruction of their hazardous wastes prior to disposal. In order to protect the public and particularly the communities where hazardous wastes are treated and disposed, the Legislature further found it essential to assure full compensation of all people injured or damaged by hazardous wastes by, in part, establishing mechanisms for establishing liability to achieve this result. Initially, civil actions to enforce the HWCL were authorized to be brought, at the request of the department, by the Attorney General, district attorneys, and city attorneys. However, 30 years ago, AB 1934 (Richter, Ch. 44, Stats. 1993) sought to bolster enforcement of hazardous waste laws. It added authority for county counsel (referred to in statute as “county attorney”) to bring civil actions to enforce the HWCL.

The author argues that the intent of the Legislature in passing AB 1934 was to broadly increase enforcement of the state’s hazardous waste violations. But, because the law failed to explicitly add county counsel to these other laws, “county counsels remain a largely untapped tool in the enforcement of hazardous waste laws.” The author argues this issue is particularly acute in counties where “district attorneys have limited resources and large criminal caseloads – particularly in unincorporated areas outside of city attorney jurisdiction” as there may be “insufficient recourse for civil enforcement of recalcitrant violators.” This dearth of adequate enforcement places the public at risk, “especially low-income areas and communities of color, and gives an unfair business advantage to chronically non-compliant actors.”

In response, the bill adds enforcement authority for county counsel to several other major hazardous waste control laws. These include laws governing medical waste requirements, underground storage tanks, and business and area plans.

The bill is co-sponsored by the County of Santa Clara, the Rural County Representatives of California, and the California State Association of Counties. They assert:

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<sup>1</sup> Health & Saf. Code § 25100 et seq.

This bill will provide county counsels with complete civil enforcement authority over hazardous waste violations, as originally intended by the Legislature. Health and Safety Code section 25182 provides that “[e]very civil action brought under [the Hazardous Waste Control Act] at the request of the [Department of Toxic Substances Control] or a unified program agency shall be brought by the city attorney, the county attorney, the district attorney, or the Attorney General in the name of the people of the State of California . . .” The legislative history of this provision specifically mentions the intent to authorize county counsels to prosecute hazardous waste regulatory laws to help ensure adequate enforcement and eliminate unfair competitive advantages enjoyed by noncompliant businesses.

However, the Legislature did not make conforming changes to several related statutes, including provisions governing hazardous waste prosecutions, the Hazardous Materials Business Plan Program, the Underground Storage Tank Program, and the Aboveground Petroleum Storage Act Program. . . . SB 642 seeks to follow through on the Legislature’s intent to add another hazardous waste enforcement option by granting county counsels complete civil enforcement authority over hazardous waste violations.

The Legislature has repeatedly extended the authority of county counsel in California to ensure enforcement of laws affecting consumers and health and safety. Recently, SB 461 (Cortese, Ch. 140, Stats. 2021) extended the authority to bring cases under the Unfair Competition Law independently to county counsel of any county within which a city has a population in excess of 750,000. Currently this provides authority to three county counsel in California, those in San Diego County, Los Angeles County, and Santa Clara County, as the cities of San Diego, Los Angeles, and San Jose have populations over 750,000.

Just last year, AB 2766 (Maienschein, Ch. 698, Stats. 2022) granted certain city attorneys and county counsel the power to conduct investigations, including the ability to issue pre-litigation subpoenas, when they reasonably believe there has been a violation of California’s Unfair Competition Law.

This bill similarly expands the pool of resources committed to advancing the public interest. Affording these public attorneys this additional authority will enable them to more robustly address hazardous waste violations in their communities.

## 2. Stakeholder positions

According to the author:

Hazardous waste violations and pollution directly impact the safety of the public, particularly low-income communities and communities of color. While city attorneys, district attorneys, and the Attorney General are authorized to prosecute hazardous waste violations, county counsels have incomplete enforcement authority.

To augment civil enforcement of hazardous waste violations, the Legislature passed AB 1934 (Richter, 1993) which specifically mentions the intent to authorize county counsels to prosecute hazardous waste regulatory laws to help ensure adequate enforcement and eliminate unfair competitive advantages enjoyed by non-compliant businesses.

However, the Legislature did not make conforming changes to several related statutes. SB 642 seeks to follow through on the Legislature's intent to add another hazardous waste enforcement option by granting county counsels complete civil enforcement authority over hazardous waste violations.

This is similar to recently enacted bills that gave and augmented county counsel enforcement powers under the Unfair Competition Law –SB 461 (Cortese, 2021) and AB 2766 (Maienschein, 2022) –and reflects the growing role of county counsels in enforcing important public rights.

This bill provides another avenue to ensure more consistent enforcement statewide so that Californians can have the clean environment they deserve.

The Urban Counties of California write in support:

Granting county counsel the authority to prosecute hazardous waste regulatory laws would yield several important benefits. It would bring new capacity to expand enforcement of hazardous waste laws and thereby ameliorate environmental dangers as well as help address chronically non-compliant violators. Several urban counties have developed specialized expertise and committed considerable resources to affirmative litigation. SB 642 would position these jurisdictions to more fully address enforcement gaps and enforce important public rights.

Writing in an oppose-unless-amended position is the California District Attorneys Association (CDAA):

While CDAA is supportive of the goal of ensuring enforcement of all environment violations involving hazardous materials, we also believe it is important that these laws are enforced consistently throughout the state, and whenever possibly by prosecutors who are directly accountable to voters, are governed by heightened prosecutorial ethical standards, and who do not use contingency fee arrangements that could undermine their neutrality. Our amendments would ensure these enforcement actions are most often conducted by prosecutors, but also allow large counties with adequate resources to fill gaps in enforcement to better protect their communities from the unlawful transportation and disposal of hazardous materials.

Their proposed amendments seek to limit the expansion of enforcement to only three county counsel, those for counties within which there is a city with a population of more than 750,000. Further limiting this enforcement authority, they also seek a provision that only allows those county counsel to bring action after they “provide the local county DA with at least 60 days’ notice of the alleged violation and the local county DA has not already commenced its own action against that alleged violation.”

Although CDAA questions the consistency of enforcement and training level if county counsel are authorized to enforce these important laws, the relevant statutes are already subject to enforcement by the Attorney General, district attorneys from all 58 counties, as well as every city attorney in California, regardless of the size of the jurisdiction. CDAA points to the important ethical standards of prosecutors as a separating factor in whether county counsel should similarly be authorized to enforce these laws. However, it should be noted that the Environmental Circuit Prosecutor Project, intended to support uniform enforcement of environmental laws and regulations including training on the prosecution of environmental violations, was recently halted after it was discovered that CDAA, the lead entity on the project, misappropriated environmental enforcement funds:

The California District Attorneys Association, a statewide advocacy group for prosecutors, siphoned nearly \$3 million that was supposed to be used for public-advocacy litigation and used it to fund training and lobbying, according to a recent audit of the group’s finances.

The audit, performed by the San Francisco accounting firm Hemming Morse, found that the association had a practice of “borrowing” funds obtained from workplace and environmental settlements since 2004, “during periods when CDAA experienced cash flow shortfalls.” The

agency repeatedly padded its general fund with money earmarked for specific purposes, the audit found.

The practice mostly depleted the group's accounts established to train prosecutors and retain specialized outside attorneys that county prosecutors hire for help handling complex cases involving environmental violations. Those funds are critical for smaller, rural counties, where district attorneys lack the resources to take on large corporations, like petroleum companies, many of which have huge legal teams tasked with beating back environmental lawsuits.<sup>2</sup>

In reforming the project discussed above, the Legislature stated its finding that “[l]ocal and state enforcement agencies can play an increasingly important role in protecting human health, the environment, and the state’s economy through greater involvement in the enforcement of environmental laws.”<sup>3</sup> It specifically added “city and county counsel” to the list of entities that the state should focus on training up to enforce environmental laws.

While some have advocated for a requirement that district attorneys be provided notice before an action can be brought by county counsel, this seems incongruous with the current enforcement infrastructure. The statutory scheme places authority in DTSC and the CUPAs to select the public prosecutor it will work with in a given case. Requiring notice before the entity chosen by DTSC or a CUPA can enforce the law overrides this process, limiting the discretion of the entities best suited to make enforcement decisions.

### **SUPPORT**

California State Association of Counties (co-sponsor)  
County of Santa Clara (co-sponsor)  
Rural County Representatives of California (co-sponsor)  
California Association of Environmental Health Administrators  
California Environmental Voters (formerly CLCV)  
Center on Race, Poverty & the Environment  
County of Monterey  
Urban Counties of California

### **OPPOSITION**

California District Attorneys Association  
Sacramento County District Attorney’s Office

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<sup>2</sup> Megan Cassidy, *Audit finds state district attorney group misspent millions allocated for environmental cases* (January 15, 2021) San Francisco Chronicle, <https://www.sfchronicle.com/bayarea/article/Audit-finds-state-district-attorney-group-15868701.php> [as of Mar. 27, 2023].

<sup>3</sup> SB 157 (Committee on Budget and Fiscal Review, Ch. 83, Stats. 2021).

**RELATED LEGISLATION**

Pending Legislation: SB 806 (Archuleta, 2023) extends enforcement authority of trash receptacle reflector law to city attorney and city counsel. This bill is currently in this Committee.

Prior Legislation:

AB 2766 (Maienschein, Ch. 698, Stats. 2022) *See* Comment 1.

SB 461 (Cortese, Ch. 140, Stats. 2021) *See* Comment 1.

AB 3020 (Gloria, Ch. 75, Stats. 2020) adjusted the distribution of civil penalties recovered by the City Attorney of San Diego in UCL actions.

AB 1934 (Richter, Ch. 44, Stats. 1993) *See* Comment 1.

**PRIOR VOTES:**

Senate Environmental Quality Committee (Ayes 5, Noes 0)

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