

Date of Hearing: July 10, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 205 (Hertzberg) – As Amended July 1, 2019

SENATE VOTE: 38-0

SUBJECT: Business licenses: stormwater discharge compliance.

SUMMARY: Requires specified businesses to demonstrate enrollment with the National Pollutant Discharge Elimination System (NPDES) permit program when applying for a business license or renewal. Specifically, **this bill:**

- 1) Requires specified businesses, when applying to a city or a county for an initial business license or business license renewal, to demonstrate enrollment with the NPDES permit program by providing all of the following information, under penalty of perjury, on the initial business license or business license renewal application:
 - a) Name and location of facilities;
 - b) All primary Standard Industrial Classification (SIC) Codes for the business; and,
 - c) Any of the following, issued by the State Water Resources Control Board (SWRCB) for each facility:
 - i) Stormwater permit number, known as the Waste Discharger Identification number (WDID);
 - ii) WDID application number;
 - iii) Notice of nonapplicability identification number (NONA); or
 - iv) No exposure certification identification number (NEC).
- 2) Requires, prior to the issuance or renewal of the business license, that the city or county to determine if any SIC codes are applicable to a General Permit for Storm Water Discharge Associated with Industrial Activities Excluding Construction (Industrial General Permit) Activities.
- 3) Requires the city or county, if applicable, to confirm that the WDID, WDID application number, NONA, or NEC corresponds to the business by keeping record of the applicable documents.
- 4) Allows the city or county to use information provided by the SWRCB for these purposes.
- 5) Requires the city or county to transfer compliance information received to the SWRCB, as requested.

- 6) Allows a city or county to develop a provisional license procedure that provides businesses that are applying for a business license renewal three months to comply with the requirements of this bill.
- 7) Declares that a "city" includes a charter city and a charter city and county, and a "county" includes a charter county and a charter city and county.
- 8) Declares that these provisions apply to initial business licenses and business license renewals submitted on or after January 1, 2020.
- 9) Requires the SWRCB to post a list of all SIC codes applicable to an Industrial General Permit on its website by April 1, 2020.
- 10) Requires the SWRCB to update that list on its website within 90 days of any final updates by the United States Department of Labor or the United States Environmental Protection Agency.
- 11) Declares that no reimbursement is required by the state because a local agency or school district has the authority to levy service charges, fees, or assessments to pay for the program mandated by this act.
- 12) Finds and declares that the provisions of this bill address the health and safety of drinking water sources throughout the state and that these provisions therefore apply to charter cities, charter counties, and charter cities and counties.

EXISTING LAW:

- 1) Allows counties and cities to license any kind of business not prohibited by law transacted and carried on within the limits of its jurisdiction.
- 2) Establishes the Industrial General Permit, which regulates industrial storm water discharges and authorized non-storm water discharges from industrial facilities in California to comply with a federal NPDES permit.
- 3) Establishes the NPDES permit program requiring the SWRCB and the nine California Regional Water Boards to prescribe waste discharge requirements which, among other things, regulate the discharge of pollutants in stormwater, including municipal stormwater systems.
- 4) Defines the categories of facilities considered to be engaging in industrial activity associated with stormwater discharge that require a NPDES permit.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill contains:

- 1) Unknown significant costs, likely in the hundreds of thousands to potentially over \$1 million annually (Waste Discharge Permit Fund), for new workload at the SWRCB and Regional Water Control Boards to enroll additional permittees, conduct inspection and enforcement activities, and maintain internet databases. Actual costs and personnel requirements would depend upon the magnitude of noncompliant businesses who enroll in the Industrial General Permit as a result of the bill. For illustrative purposes, the Regional Boards would require

two PY at a cost of approximately \$350,000 for every 1,000 new enrollees to conduct inspections and ensure compliance.

- 2) Unknown increase in Industrial General Permit fee revenues as a result of increased compliance with NPDES permit requirements. Fee revenues would depend upon the number of businesses who enroll in the Industrial General Permit as a result of the bill (Waste Discharge Permit Fund).

COMMENTS:

- 1) **Business Licenses.** Existing statutes dating back to 1901 have empowered both counties and cities to license businesses for the purpose of regulation. The California Constitution allows a city or county to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws,” known as police powers. It is from this fundamental power that local governments derive their authority to regulate behaviors, business operations, and land uses. Local agencies also use this “police power” to abate nuisances and protect public health, safety, and welfare.

As an extension of the police power, state law allows local governments to require businesses operating in their jurisdictions to obtain a license and impose related licensing fees. Local governments license businesses for lots of reasons: to identify individuals operating businesses in their jurisdictions, to ensure compliance with other local laws, to facilitate contact in case a problem arises, and to raise money to support public services that support those businesses.

Business license application and renewal processes vary throughout the state. Some cities use an “over-the-counter” ministerial process when issuing business licenses. While most cities and counties require businesses to operate under a business license, some cities and counties do not issue business licenses at all, including the counties of Sonoma, Orange, Santa Clara, and San Diego.

- 2) **Background.** Stormwater is water from rain or snow melt that runs off surfaces, such as rooftops, paved streets, highways, or parking lots and can carry with it pollutants, such as oil, pesticides, herbicides, sediment, trash, bacteria, and metals. To curb the harmful effects of pollution from stormwater runoff, federal law requires states to set restrictions and regulate the pollutants that can be discharged into water bodies. The NPDES permit program regulates storm water discharges from different types of activities, including industrial activities, and requires permittees to ensure that any discharge into waterways does not adversely impact water quality or the environment. The SWRCB oversees the implementation for the NPDES permit program at the state level by enrolling businesses in the Industrial General Permit. There are approximately 10,000 registered industrial storm water dischargers in California, including oil refineries, landfills, manufacturing plants, auto yards, and scrap metal recyclers.

The SWRCB also maintains on its website a list of industries, represented as SIC codes, that are regulated by the Industrial General Permit. The SIC code is a four-digit code system established by the federal government in 1937 to classify industries, and was originally used to promote uniformity of data collected by various government agencies.

- 3) **Bill Summary and Author's Statement.** This bill requires certain businesses to demonstrate enrollment with the NPDES permit program prior to the issuance or renewal of a local business license by cities and counties. Under the provisions of this bill, cities and counties would have to determine if a business' SIC code is applicable to an Industrial General Permit, and if so, will have to confirm that the SIC code matches the SIC code on certain documentation provided by the business. This bill is sponsored by the California Coastkeeper Alliance.

According to the author, "The Stormwater Quality Improvement Act will diminish water pollution and improve the health and quality of California's lakes, bays, wetlands, and estuaries by requiring industrial facilities to demonstrate compliance with a water quality permit when applying for their business license or renewal."

4) **Policy Considerations.**

- a) **Liability.** Under the provisions of this bill, cities and counties will have to determine if a business's SIC code is applicable to an Industrial General Permit, and if so, match that same SIC code to corresponding documentation submitted by the business. It is possible that a business may attain a business license or business license removal without having enrolled in the NPDES program due to an error on the county and/or city's part. The Committee may wish to consider if this bill shifts compliance liability to cities and counties.
- b) **Exemption Clarification.** As mentioned above, the business license application and renewal process in cities and counties varies greatly. However, SB 205 does not explicitly state whether cities and counties that *do not issue* or *do not require* applications for business licenses and business license renewals must follow the provisions of this bill. The Committee may wish to consider if clarification is needed to ensure that cities and counties without business license application processes are not required to create one to conform to this bill.

- 5) **Committee Amendments.** In response to the policy considerations above, the Committee may wish to amend the bill in the following ways:

- a) Add a clarifying clause regarding liability:

Business and Professions Code 16000.3. (h) This section shall not be construed to impose any additional liability on a city under the National Pollutant Discharge Elimination System permit program for non-enrollment under a General Permit for Storm Water Discharge Associated with Industrial Activities Excluding Construction Activities by a person who conducts a business operation that is a regulated industry, as defined in Section 13383.5 of the Water Code.

Business and Professions Code 16100.3. (h) This section shall not be construed to impose any additional liability on a county under the National Pollutant Discharge Elimination System permit program for non-enrollment under a General Permit for Storm Water Discharge Associated with Industrial Activities Excluding Construction Activities by a person who conducts a business operation that is a regulated industry, as defined in Section 13383.5 of the Water Code.

- b) Add a clarifying clause regarding local agencies that would be exempt from the provisions of this bill:

Business and Professions Code 16000.3 (g) This section shall not apply to a city that does not have an application process for issuing or renewing business licenses or does not issue or renew business licenses.

Business and Professions Code 16100.3 (g) This section shall not apply to a county that does not have an application process for issuing or renewing business licenses or does not issue or renew business licenses.

- 6) **Arguments in Support.** According to California Coastkeeper Alliance, the sponsor of this bill, “The State Water Board’s Industrial General Permit regulates industrial stormwater discharges from industrial facilities throughout California. Despite the approximate 10,000 industrial discharges that have enrolled under this permit, there are tens of thousands more dischargers that have failed to even enroll in the Permit. This lack of enrollment means the proliferation of polluted discharge into California’s waterways and the inability of individual municipalities to comply with water quality requirements due to unknown sources of pollution. SB 205 addresses the pervasive issue of unenrolled industrial facilities by requiring applicable facilities to demonstrate compliance with the Industrial General Permit when applying for or renewing a business license.”
- 7) **Arguments in Opposition.** The League of California Cities argues, “First, not all cities require the issuance of a business license to operate in their jurisdiction. As such, this bill may not capture all of the businesses it seeks to include. Second, the NPDES permitting process is administered by the SWRCB, not cities. By requiring cities to verify compliance with state stormwater permits, this bill will shift responsibility to cities to enforce a SWRCB program... The League requests amendments that do not require local governments to alter their existing processes to issue business licenses and do not shift compliance responsibility for state stormwater permits onto local governments.”
- 8) **Double-Referral.** This bill was heard by the Environmental Safety and Toxic Materials Committee on June 18, 2019, and passed with a 7-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coastkeeper Alliance [SPONSOR]
American Rivers
California Coastal Protection Network
California Metals Coalition
Center for Biological Diversity
Coachella Valley Waterkeeper
Foothill Conservancy
Heal the Bay
Humboldt Baykeeper
Inland Empire Waterkeeper
Institute of Scrap Recycling Industries, West Coast Chapter
Klamath Riverkeeper
Los Angeles Waterkeeper
Monterey Coastkeeper
Natural Resources Defense Council (NRDC)
Orange County Coastkeeper
Otter Project
Planning and Conservation League
Russian Riverkeeper
San Diego Coastkeeper
San Francisco Baykeeper
Santa Barbara Channelkeeper
Save the Bay
State of California Auto Dismantlers Association
Surfrider Foundation
Wholly H2O
Yuba River Waterkeeper

Opposition

California Construction and Industrial Materials Association
California State Association of Counties (CSAC) (unless amended)
League of California Cities (unless amended)
San Gabriel Valley Council of Governments (unless amended)

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