UPDATED

March 9, 2017

TO: Members, Senate Natural Resources and Water

FROM: Louinda V. Lacey, Policy Advocate

SUBJECT: **SB 49 (DE LEÓN) CALIFORNIA ENVIRONMENTAL, PUBLIC HEALTH, AND WORKERS DEFENSE ACT OF 2017**
HEARING SCHEDULED – MARCH 14, 2017
OPPOSE/JOB KILLER – AS AMENDED FEBRUARY 22, 2017

The California Chamber of Commerce must respectfully **OPPOSE SB 49 (de León),** which has been labeled a **JOB KILLER.** While we appreciate California's concerns regarding the uncertainty at the federal level associated with the environmental laws identified in the bill, **SB 49** is a premature, overbroad, and vague response to things that could happen in the future while in the present creating substantial uncertainty for businesses in advance of any such potential changes and correspondingly greatly increasing the potential for costly litigation.

SB 49 would require the state agencies to adopt the baseline federal standards in the federal Clean Air Act, the federal Safe Drinking Water Act, the federal Water Pollution Control Act, the federal Endangered Species Act, and "other federal laws" defined as unidentified laws "relating to environmental protection, natural resources, or public health." The bill would also prohibit a state agency from amending or revising its rules or regulations in a manner less stringent in its protection of workers' rights or worker safety than standards established pursuant to federal law in existence as of January 1, 2016.

We believe a targeted approach where state agencies respond to federal action on a case-by-case basis is more appropriate. Offering one example of the impact of this bill, a practicing environmental attorney explained: "If passed, Senate Bill 49 would nearly double the number of listed species under [the California Endangered Species Act (CESA)] by adding 74 animals that are currently only protected under the federal Endangered Species Act (federal ESA). Further, Senate Bill 49 would arguably protect federal listed species from habitat modification that rises to the level of 'take' under the federal ESA, a protection those species do not currently enjoy under CESA. This could create many headaches for developers, in particular as they deal with a state agency that does not have the resources or experience to process incidental take permit applications for species listed only under the federal ESA." These practical implications and consequences should be given serious consideration, especially given the broad language used in the bill.

The reference to "other federal laws" is also problematic because it creates additional confusion by simply being defined as laws not specifically identified that relate to "environmental protection, natural resources, or public health." It would be left to the courts to interpret the broad language when litigation arises, which would leave businesses in limbo and subject to a myriad of unmeritorious lawsuits while such litigation makes its way through the court system.

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The overbreadth of the bill further appears to run afoul with the constitutional "single-subject rule" principle. (Cal. Const. art. IV, § 9.) The constitutional section states: "A statute shall embrace but one subject, which shall be expressed in its title." **SB 49** clearly deals with more than one subject (at a minimum with the inclusion of workers' rights and worker safety standards in the same bill), which is contrary to the single-subject rule. (See, e.g. *Harbor v. Deukmejian* (1987) re Cal. 3d 1078, 1096; *Lewis v. Dunne* (1901) 134 Cal. 291, 295-296.)

The private rights of action contemplated in **SB 49**, if triggered, would essentially create a Private Attorneys General Act (PAGA) with respect to environmental laws similar to PAGA in the labor and employment context. PAGA in the labor and employment context has resulted in various shakedown lawsuits that only increase costs to businesses without providing any corresponding benefit to employees. The private rights of action contemplated in **SB 49** would similarly merely create an additional avenue of costly litigation against businesses that will limit their ability to grow their business and workforce in California, while also adding cases to the overburdened dockets of the judicial system. Moreover, federal courts have created specialized procedures to deal with the citizen suits relating to federal environmental laws due to the complexities created by such lawsuits. Without having such institutional procedures in place, lawsuits under the contemplated private rights of action in **SB 49** would most likely hold businesses hostage for an even greater period of time while the overburdened California courts attempt to deal with the influx of such cases and the unique complexities associated therewith.

Another fundamental issue with the contemplated private rights of action in **SB 49** is the vague and uncertain language as to when the private rights of action would be triggered. Each of the private rights of action would be triggered if either of the following occurs: 1) the United States Environmental Protection Agency revises the standards or requirements described in the newly contemplated statutes to be less stringent than the applicable baseline federal standards; and 2) the identified federal environmental laws are amended to repeal the citizen suit provisions contained therein. Some of the concerns regarding this structure are:

- Would a change in any standard or requirement open the door to a private right of action as to all standards or requirements?

- Because the word "either" is used and assuming no repeal of the citizen suit provision occurs, can a business be sued under the California private right of action and the federal citizen suit provision for the same violation by potentially different plaintiffs? If so, the courts will have to grapple with the procedure for consolidating/coordinating such cases.

Without clarification, the courts would have to grapple with these questions, which will result in many pending cases sitting on the dockets for years without any certainty for businesses while they struggle with increased litigation costs.

For these reasons, CalChamber must **OPPOSE SB 49 (de León)** as a **JOB KILLER**.

cc: The Honorable Kevin de León
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Bill Craven, Senate Natural Resources and Water Committee
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