



CITY OF SACRAMENTO

DEPARTMENT OF LAW
812 TENTH STREET SACRAMENTO, CA 95814
SUITE 201 TELEPHONE (916) 449-5346

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JAMES P. JACKSON
City Attorney
THEODORE H. KOBEY, JR.
Assistant City Attorney
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
LAWRENCE M. LUNARDINI
DIANE B. BALTER
RICHARD F. ANTOINE
TAMARA L. MILLIGAN-HARMON
Deputy City Attorneys

March 4, 1987

Law & Legislation Committee
Council Chambers
Sacramento, CA 95814

Re: SB 269 (Kopp) Relating to
Toxic Chemical Discharges

Members in Session:

SUMMARY

SB 269 (Kopp) would apply Proposition 65's provisions to public entities. This report recommends that the City declare its opposition to SB 269.

BACKGROUND

Proposition 65 (the "Toxics Initiative"), as approved by the voters in November, 1986, exempted cities and other governmental agencies from its major provisions. This exemption was well publicized prior to the election, especially by opponents of Proposition 65.

One of the declared goals of Proposition 65 is to shift the cost of hazardous waste clean-up from law-abiding taxpayers to those private entities who cause toxic discharges. Premature application of Proposition 65 to public entities threatens this goal.

A detailed discussion of the effects of SB 269 on the City of Sacramento is found in the attached analysis prepared by Public Works staff. Several City operations and facilities could be adversely affected by SB 269, including our water treatment plant, the 28th Street landfill, wastewater reuse projects, and the use of pesticides by the Parks and Community Services Department. SB 269 would impose new costs on local entities without reimbursement and reduce the options, methods, alternatives and flexibility available to the City in dealing with problems, issues, and policies of local government.

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The question of whether to include public entities can be better addressed after the state has gained experience with implementation of Proposition 65 as written.

REVIEW BY SACRAMENTO TOXIC SUBSTANCES COMMISSION

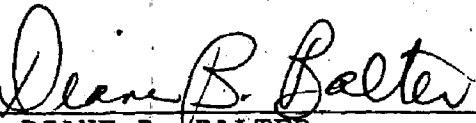
At its March 2, 1987, meeting the City's Toxic Substances Commission reviewed SB 269 and unanimously voted to remain neutral.

RECOMMENDATION

It is recommended that the Committee declare City opposition to SB 269 (Kopp) relating to toxic chemical discharges.

Respectfully submitted,

JAMES P. JACKSON
City Attorney

By 
DIANE B. BALTER
Deputy City Attorney

DBB: rmm

Attachment

B I L L R E F E R R A L

DATE: _____ COMMITTEE ACTION: _____

TO: Diane Balter, Deputy City Attorney DATE: _____

FROM: Public Works Administration

REPLY NO LATER THAN:

A.B. S.B. 269 Relating to : Toxic Chemicals -
Discharges

STATUS: Pending hearing in Senate Committee on Toxics and Public Safety
Management

Please review the attached measure to determine its effect upon the City of Sacramento and complete the following questions as appropriate. During your analysis of this measure, if questions arise, please feel free to contact me at X5346. This questionnaire should be returned to me for presentation to the Council Committee on Law and Legislation. PLEASE LEAVE THE BILL ATTACHED TO THIS FORM.

PLEASE TYPE YOUR RESPONSE

1. Briefly describe the provisions of the bill (attach additional sheets if necessary).

Proposition 65 (the "Toxics Initiative") was approved by the voters last November. This statutory initiative specifically exempted cities and other governmental entities from its major provisions. SB 269 would repeal the public entity exemption in Proposition 65 for all governmental activities except sewage treatment facilities.

2. Should this measure be: (Please circle desired position)

Supported Opposed Supported if Amended
Placed on Watch List Other (explain)

3. Please explain your reasons for the above determination, including how this measure affects your Department and the fiscal impact of this measure to the City. (Your analysis will be used in communicating with the Governor and the Legislature, so please make your comments in a format that can be used in a letter to those officials.) (Attach additional sheets if necessary.)

See attached.

3. CONTINUED:

SB 269 appears to contravene the voters' intent in approving the "Toxics Initiative" and there has been no opportunity to see how Proposition 65 is going to be implemented as it applies to the private sector.

The proponents of Proposition 65 deliberately exempted public entities because they wanted to focus on the large private businesses which produce more than 90% of all hazardous waste in California. The language of Proposition 65 declared a goal of shifting the cost of hazardous waste clean-ups more onto offenders and less onto law-abiding taxpayers. SB 269 is based on the same argument the voters rejected, i.e., that Proposition 65 was faulty because it did not apply to governmental entities. In addition, SB 269 is premature. The Governor has not yet issued his preliminary list of chemicals which will be regulated, and the key operative provisions of Proposition 65 will not take effect until 1988. In addition, many of the specific provisions of Proposition 65 have yet to be defined through implementing legislation, administrative regulations, and court decisions. Therefore, we have not had a chance to evaluate its potential impact on the city; legislation to make a major substantive change in Proposition 65 seems premature at this time.

Several City operations and facilities could be adversely affected by SB 269, including our Water Treatment Plants, the 28th Street Landfill, Wastewater reuse projects, and the use of pesticides by the Parks and Community Services Department.

For example, a literal interpretation of Proposition 65 might mean that drinking water could not be chlorinated because the chlorination process leaves minute quantities of cancer-causing chemicals in drinking water. In its current form, Proposition 65 would not allow a public entity to balance the public health risk of bacterial contamination in drinking water against the lesser risk of cancer. Municipal landfills which are found to emit detectable quantities of listed chemicals as a component of landfill gas or leachate could be found to violate Proposition 65, potentially necessitating redesign or closure of those landfills. The citizen suit provision would authorize any member of the public to sue public entities whose activities are suspected of violating Proposition 65 even if no injury had occurred, thereby forcing protracted and expensive legal proceedings to determine whether the city's activities meet the stringent standards contained in Proposition 65. Successful plaintiffs would be entitled to recover 25% of any civil fines levied on the City, in addition to attorney fees.

Furthermore, because of the recent California Supreme Court decision in County of Los Angeles vs. State of California, the new costs imposed on cities as a result of this legislation would not be reimbursable. That case limited reimbursement to mandates which impose unique requirements on local governments or require provision of a new service to the public. The Legislative Counsel has interpreted this case to mean that the Legislature would not have to reimburse local governments for the additional costs created by legislation such as Proposition 65. Until the provisions of Proposition 65 are defined more precisely, it is difficult to assess its potential fiscal effect on cities.

3. CONTINUED:

The League of Cities, which has consistently supported reasonable legislation to protect the public from exposure to hazardous substances, is opposed to SB 269. Examples of such legislation include the Underground Storage Tank Act (AB 1362), the Community Right-to-Know law (AB 2185), and the Hazardous Waste Planning and Siting law (AB 2948). Hopefully, legislation can be crafted to implement the purposes of Proposition 65 without imposing unreasonable requirements on local governments. In the meantime, however, the League is opposed to legislation such as SB 269 which is not carefully targeted toward specific activities of cities which could pose a substantial risk to the public health if not adequately regulated.

4. Specify the City's legislative policy guideline(s) applicable to this measure (if any).

7.9(a) oppose legislation which will mandate local governments to incur costs and which do not include an appropriation to reimburse local agencies. 7.9(b) oppose legislation which will reduce the options, methods, alternatives and flexibility available to the City in dealing with problems, issues, and policies of local government.

5. If this measure could be amended to either improve its favorable aspects or to minimize its adverse aspects, which amendments would you propose?

6. List known support or opposition to this measure by groups with which you are familiar and include addresses and phone numbers, if known. League of California Cities position:

League of California Cities: Opposed
California Municipal Utilities Association: Opposed

7. Does this bill involve a State-mandated local program? If so, does the bill contain an S.B. 90 waiver, or an appropriation for allocation and disbursement to local agencies pursuant to Revenue and Taxation Code Section 2231?

Yes; bill contains no appropriation.

8. Using a rating scale of 1 to 10 (with 10 as the most important), how important do you think this bill is to the City of Sacramento?
10

FORM COMPLETED BY: Roberta Larson

DATE: 2/13/87

Introduced by Senator Kopp

February 2, 1987

An act to amend Section 25249.11 of the Health and Safety Code, relating to toxic chemicals.

LEGISLATIVE COUNSEL'S DIGEST

SB 269, as introduced, Kopp. Toxic chemicals: discharges. The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) prohibits any person in the course of doing business from knowingly discharging or releasing a chemical known to the state to cause cancer or reproductive toxicity into water, except as specified, and prohibits any person in the course of doing business to knowingly and intentionally expose any individual to such a chemical without giving a specified warning. These provisions exclude from the definition of a "person in the course of doing business" a city, county, or district, a state or federal agency, or an entity in its operation of a public water system.

This bill would include cities, counties, districts, and state and federal agencies within these discharge and exposure prohibitions and would instead exclude an entity in its operation of publicly owned treatment works, as defined in the Federal Water Pollution Control Act.

Vote: $\frac{3}{5}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25249.11 of the Health and
2 Safety Code is amended to read:

3 25249.11. Definitions:

4 For For purposes of this chapter:

5 (a) "Person" means an individual, trust, firm, joint
6 stock company, corporation, company, partnership, and
7 association, city, county, district, and the state, or any
8 department or agency thereof, and, to the extent
9 permitted by federal law, the federal government or any
10 department or agency thereof.

11 (b) "Person in the course of doing business" does not
12 include any person employing fewer than ten 10
13 employees in his the person's business; any city, county,
14 or district or any department or agency thereof or the
15 state or any department or agency thereof or the federal
16 government or any department or agency thereof; or any
17 entity in its operation of a public water system as defined
18 in Section 4010.1 publicly owned treatment works, as
19 defined in Section 1292 of Title 33 of the United States
20 Code.

21 (c) "Person in the course of doing business" includes,
22 but is not limited to, any action taken by a public agency
23 in the course of its operations.

24 (d) "Significant amount" means any detectable
25 amount except an amount which would meet the
26 exemption test in subdivision (c) of Section 25249.10 if an
27 individual were exposed to such an amount in drinking
28 water.

29 ~~(d)~~
30 (e) "Source of drinking water" means either a present
31 source of drinking water or water which is identified or
32 designated in a water quality control plan adopted by a
33 regional board as being suitable for domestic or
34 municipal uses.

35 ~~(e)~~
36 (f) "Threaten to violate" means to create a condition
37 in which there is a substantial probability that a violation
38 will occur.

1 ~~(f)~~
2 (g) "Warning" within the meaning of Section 25249.6
3 *need is not required* to be provided separately to each
4 exposed individual and may be provided by general
5 methods such as labels on consumer products, inclusion
6 of notices in mailings to water customers, posting of
7 notices, placing notices in public news media, and the
8 like, provided that the warning accomplished is clear and
9 reasonable. In order to minimize the burden on retail
10 sellers of consumer products, including foods,
11 regulations implementing Section 25249.6 shall, to the
12 extent practicable, place the obligation to provide any
13 warning materials such as labels on the producer or
14 packager rather than on the retail seller, except where
15 the retail seller itself is responsible for introducing a
16 chemical known to the state to cause cancer or
17 reproductive toxicity into the consumer product in
18 question.

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