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CITY OF OAKLAND
CITY COUNCIL

LEGISLATIVE ANALYST MEMORANDUM

To: Rules and Legislation Committee
From: Alice Glasner, Legislative Analyst
Date: April 24, 2008
Re:

SUMMARY

On March 4, 2008, City Council, by unanimous vote, passed a resolution opposing the aerial pesticide spraying program planned by the California Department of Food and Agriculture for eradication of the light brown apple moth (LBAM). At that time, Council requested an analysis of related bills proposed by the State assembly.

AB2760 (Leno) would require an Environmental Impact Report prior to any aerial pesticide application for the LBAM over an urban area. Because of its recent amendment with an urgency clause, this bill could preclude the planned summer aerial spraying over the Bay Area.

AB2763 (Laird), AB2764 (Hancock), AB2765 (Huffman), and AB 2892 (Swanson) would significantly increase the information available to the public before similar eradication efforts are launched in the future. AB2763 would create an advanced planning program to identify invasive pests and consider treatments; this bill would require public hearings when pesticides are recommended by the state as the preferred treatment method. AB2765 calls for full disclosure of pesticide ingredients and consideration of alternatives to pesticides prior to any decision to use an aerial application over an urban area. AB2892 would require public consent in effected areas, through a ballot process prior to an aerial pesticide application. AB2764 would require that the Governor call a state of emergency before an aerial pesticide treatment over urban areas, instead of the California Secretary of Agriculture, a non-elected official.

BACKGROUND

In 2007 the light brown apple moth, a crop pest native to Australia, was discovered in Berkeley. After extensive trapping, thousands of moths were found in the Bay Area and elsewhere. The federal government and California's Secretary of Agriculture declared an emergency.

The California Department of Food and Agriculture directs the LBAM eradication program that began in fall 2007 and included aerial application of a pheromone-containing compound (classified by the state as a pesticide) over parts of Monterey and Santa Cruz counties. More than 600 health complaints were received subsequent to the spraying, as well as reports regarding domestic and wild animal deaths. Aerial spraying over the Bay Area is planned for this summer, and will include Oakland and other cities.

A large public outcry over the spraying resulted in the creation of the five assembly bills mentioned above as well as two legislative resolutions: ACR 117 (Laird) asks the State to provide health information pertaining to the aerial spraying that occurred in 2007 and calls for a proposed plan for tracking health impacts after future spraying, and SCR 87 (Migden) calls for a moratorium on the spraying program until the pheromone treatment is shown to be safe for humans and effective. Twenty-eight organizations signed a letter, addressed to the Chair of the assembly's Agriculture Committee, supporting these bills and resolutions,

POLICY DISCUSSION

The bills discussed are consistent with the letter and intent behind Oakland City Council Resolution 81096 C.M.S, which opposes the aerial spray program until a reliable independent study has determined such a program to be safe.

CONCLUSIONS/ RECOMMENDATIONS

City Council should actively support the five bills mentioned above with assistance from City lobbyists. If any of the bills does not move forward, those that do should be amended to include language that will 1) seek an independent health impacts assessment prior to any pesticide spraying in urban areas, and 2) include an urgency clause so that the legislation is enacted immediately (prior to implementation of further spraying).

CITY OF OAKLAND

BILL ANALYSIS



Date: April 24, 2008

Bill Numbers and Authors:

AB2760 (Leno)

AB2763 (Laird)

AB 2764 (Hancock)

AB 2765 (Huffman)

AB 2896 (Swanson)

DEPARTMENT INFORMATION

Contact: Alice Glasner

Department: City Council

Telephone: 238-4991 **FAX #**

e-mail: aglasner@oaklandnet.com:

RECOMMENDED POSITION:

Support all of these bills. If any are defeated before the final Assembly vote, the remaining bill(s) should be amended, if necessary, to contain

- a) An urgency clause to ensure that planned spraying over Oakland does not occur before complete information on possible health and environmental effects has been provided.

Summary of the Bills

AB2760 (Leno). This bill calls for completion of an Environmental Impact Report (EIR) **before** aerial application of pesticides in urban areas. This bill has been amended and now contains **an urgency clause**. It is scheduled to be heard in the Assembly's Natural Resources Committee on April 14, and is anticipated to move quickly to the full Assembly.

AB2763 (Laird). This bill would require that CDFA develop and maintain an inventory of invasive, non-native pests and provide a written assessment with public input for their eradication, control, or management. This advanced planning program would include health and environmental studies when proposed methods include the use of pesticides. This bill also calls

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for setting up a public hotline for reporting adverse health consequences and a medical process to evaluate and respond to adverse health consequences when the use of a pesticide is the selected response

AB 2764 (Hancock). The legislation would require that the Governor declare a state of emergency in order to conduct aerial pesticide spraying over urban areas.

AB 2765 (Huffman). This would require a public hearing and the examination of alternatives to aerial spraying before any decision to do so. It also requires full disclosure of all pesticide components and to seek independent certification of their safety.

AB 2896 (Swanson) would require that any proposed pesticide spraying program over urban areas acquire the consent of two-thirds of the registered voters through an election process.

Positive Factors for Oakland

In totality, these bills reflect City Council's interest in opposing aerial spraying until critical health and safety information is available, and provide for transparent decision-making. Measures are consistent with City policies, in that they provide for greater dissemination of information on health and environmental impacts, and seek a review of alternatives to aerial pesticide applications over urban areas.

Negative Factors for Oakland

None known

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

- Critical** (top priority for City lobbyist, city position required ASAP)
 Very Important (priority for City lobbyist, city position necessary)
 Somewhat Important (City position desirable if time and resources are available)
 Minimal or **None** (do not review with City Council, position not required)

Known support:

Albany for
Environmental Health
Asian Immigrant
Women Advocates
Breast Cancer Action

Butte Environmental
Council
California Church
IMPACT
California Indian

Environmental
Alliance
California Nurses
Association
Coalition for Clean Air

Center for
Environmental Health
Center for Third
World Organizing
Citizens for East
Shore Parks
Citizens for the
Albany Shoreline
Ecological Options
Network
Environment
California
Environmental Law

Foundation
Green Schools
Initiative
Healthy San Leandro
Learning Disabilities
Association of
California
Parents for a Safer
Environment
Pesticide Watch
Planning and
Conservation League
Santa Cruz Women's

International League
for Peace and Justice
Search for the Cause
Sequoia Audubon
Society
StoptheSpray.ORG
Thimmaka.org
Vote Health

Known Opposition:

(AB 2892) Swanson: Family Winemakers of California.

Attach bill text and state legislative committee analysis, if available.

Respectfully Submitted,



Legislative Analyst

ASSEMBLY BILL

No. 2760

Introduced by Assembly Member Leno

February 22, 2008

An act to amend Section 21151.1 of the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2760, as introduced, Leno. Environment: CEQA: pest eradication.

(1) The California Environmental Quality Act requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect.

Existing law authorizes the Secretary of Food and Agriculture to notify specified entities before aerial spraying of a pesticide to effect the eradication of a pest if the eradication project is located in a urban area.

This bill would require the preparation of an environmental impact report or the modification, addendum, or supplement to an existing environmental impact report for the application of pesticide in an urban area for the eradication of light brown apple moth.

Vote: majority. 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 21151.1 of the Public Resources Code
2 is amended to read:

3 21151.1. (a) Notwithstanding paragraph (6) of subdivision (b)
4 of Section 21080, or Section 21080.5 or 21084, or any other
5 provision of law, except as provided in this section, a lead agency
6 shall prepare or cause to be prepared by contract, and certify the
7 completion of, an environmental impact report or, if appropriate,
8 a modification, addendum, or supplement to an existing
9 environmental impact report, for a project involving any of the
10 following:

11 (1) (A) The burning of municipal wastes, hazardous waste, or
12 refuse-derived fuel, including, but not limited to, tires, if the project
13 is either of the following:

14 (i) The construction of a new facility.

15 (ii) The expansion of an existing facility that burns hazardous
16 waste that would increase its permitted capacity by more than 10
17 percent.

18 (B) This paragraph does not apply to a project exclusively
19 burning hazardous waste, for which a final determination under
20 Section 21080.1 has been made prior to July 14, 1989.

21 (2) The initial issuance of a hazardous waste facilities permit
22 to a land disposal facility, as defined in subdivision (d) of Section
23 25199.1 of the Health and Safety Code.

24 (3) The initial issuance of a hazardous waste facilities permit
25 pursuant to Section 25200 of the Health and Safety Code to an
26 offsite large treatment facility, as defined pursuant to subdivision
27 (d) of Section 25205.1 of the Health and Safety Code.

28 (4) A base reuse plan as defined in Section 21083.8.1. The
29 Legislature hereby finds that no reimbursement is required pursuant
30 to Section 6 of Article XIII B of the California Constitution for an
31 environmental impact report for a base reuse plan if an
32 environmental impact report is otherwise required for that base
33 reuse plan pursuant to any other provision of this division.

34 (5) *The application of a pesticide, as defined pursuant to Section*
35 *12753 of the Food and Agricultural Code, by the Department of*
36 *Food and Agriculture in an urban area for an eradication project*
37 *for light brown apple moth.*

1 (b) For purposes of clause (ii) of subparagraph (A) of paragraph
2 (1) of subdivision (a), the amount of expansion of an existing
3 facility shall be calculated by comparing the proposed facility
4 capacity with whichever of the following is applicable:

5 (1) The facility capacity authorized in the facility's hazardous
6 waste facilities permit pursuant to Section 25200 of the Health and
7 Safety Code or its grant of interim status pursuant to Section
8 25200.5 of the Health and Safety Code, or the facility capacity
9 authorized in a state or local agency permit allowing the
10 construction or operation of a facility for the burning of hazardous
11 waste, granted before January 1, 1990.

12 (2) The facility capacity authorized in the facility's original
13 hazardous waste facilities permit, grant of interim status, or a state
14 or local agency permit allowing the construction or operation of
15 a facility for the burning of hazardous waste, granted on or after
16 January 1, 1990.

17 (c) For purposes of paragraphs (2) and (3) of subdivision (a),
18 the initial issuance of a hazardous waste facilities permit does not
19 include the issuance of a closure or postclosure permit pursuant
20 to Chapter 6.5 (commencing with Section 25100) of Division 20
21 of the Health and Safety Code.

22 (d) Paragraph (1) of subdivision (a) does not apply to a project
23 that does any of the following:

24 (1) Exclusively burns digester gas produced from manure or
25 any other solid or semisolid animal waste.

26 (2) Exclusively burns methane gas produced from a disposal
27 site, as defined in Section 40122, that is used only for the disposal
28 of solid waste, as defined in Section 40191.

29 (3) Exclusively burns forest, agricultural, wood, or other biomass
30 wastes.

31 (4) Exclusively burns hazardous waste in an incineration unit
32 that is transportable and that is either at a site for not longer than
33 three years or is part of a remedial or removal action. For purposes
34 of this paragraph, "transportable" means any equipment that
35 performs a "treatment" as defined in Section 66216 of Title 22 of
36 the California Code of Regulations, and that is transported on a
37 vehicle as defined in Section 66230 of Title 22 of the California
38 Code of Regulations, as those sections read on June 1, 1991.

39 (5) Exclusively burns refinery waste in a flare on the site of
40 generation.

- 1 (6) Exclusively burns in a flare methane gas produced at a
2 municipal sewage treatment plant.
- 3 (7) Exclusively burns hazardous waste, or exclusively burns
4 hazardous waste as a supplemental fuel, as part of a research,
5 development, or demonstration project that, consistent with federal
6 regulations implementing the Resource Conservation and Recovery
7 Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been
8 determined to be innovative and experimental by the Department
9 of Toxic Substances Control and that is limited in type and quantity
10 of waste to that necessary to determine the efficacy and
11 performance capabilities of the technology or process. However,
12 a facility that operated as a research, development, or demonstration
13 project and for which an application is thereafter submitted for a
14 hazardous waste facility permit for operation other than as a
15 research, development, or demonstration project shall be considered
16 a new facility for the burning of hazardous waste and shall be
17 subject to subdivision (a) of Section 21151.1.
- 18 (8) Exclusively burns soils contaminated only with petroleum
19 fuels or the vapors from these soils.
- 20 (9) Exclusively treats less than 3,000 pounds of hazardous waste
21 per day in a thermal processing unit operated in the absence of
22 open flame, and submits a worst-case health risk assessment of
23 the technology to the Department of Toxic Substances Control for
24 review and distribution to the interested public. This assessment
25 shall be prepared in accordance with guidelines set forth in the Air
26 Toxics Assessment Manual of the California Air Pollution Control
27 Officers Association.
- 28 (10) Exclusively burns less than 1,200 pounds per day of
29 medical waste, as defined in Section 117690 of the Health and
30 Safety Code, on hospital sites.
- 31 (11) Exclusively burns chemicals and fuels as part of firefighter
32 training.
- 33 (12) Exclusively conducts open burns of explosives subject to
34 the requirements of the air pollution control district or air quality
35 management district and in compliance with OSHA and Cal-OSHA
36 regulations.
- 37 (13) Exclusively conducts onsite burning of less than 3,000
38 pounds per day of fumes directly from a manufacturing or
39 commercial process.

1 (14) Exclusively conducts onsite burning of hazardous waste
2 in an industrial furnace that recovers hydrogen chloride from the
3 flue gas if the hydrogen chloride is subsequently sold, distributed
4 in commerce, or used in a manufacturing process at the site where
5 the hydrogen chloride is recovered, and the burning is in
6 compliance with the requirements of the air pollution control
7 district or air quality management district and the Department of
8 Toxic Substances Control.

9 (e) Paragraph (1) of subdivision (a) does not apply to a project
10 for which the State Energy Resources Conservation and
11 Development Commission has assumed jurisdiction under Chapter
12 6 (commencing with Section 25500) of Division 15.

13 (f) Paragraphs (2) and (3) of subdivision (a) do not apply if the
14 facility only manages hazardous waste that is identified or listed
15 pursuant to Section 25140 or 25141 of the Health and Safety Code
16 on or after January 1, 1992, but not before that date, or only
17 conducts activities that are regulated pursuant to Chapter 6.5
18 (commencing with Section 25100) of Division 20 of the Health
19 and Safety Code on or after January 1, 1992, but not before that
20 date.

21 (g) This section does not exempt a project from any other
22 requirement of this division.

23 (h) For purposes of this section, offsite facility means a facility
24 that serves more than one generator of hazardous waste.

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2763

Introduced by Assembly Member Laird

February 22, 2008

An act to add Chapter 4.5 (commencing with Section 5260) to Part 1 of Division 4 of the Food and Agricultural Code, relating to pests.

LEGISLATIVE COUNSEL'S DIGEST

AB 2763, as amended, Laird. Invasive pests: advance planning: assessments.

Existing law generally provides for the eradication of pests that threaten this state's agriculture.

This bill would require the Department of Food and Agriculture to develop and maintain a list of ~~invasive animals, plants, and insects~~ *invasives, defined to mean nonnative animals, plants, insects, and diseases and classes of similar nonnative animals, plants, insects, and diseases*, that have a reasonable likelihood of entering the state for which an eradication ~~or~~, control, *or management* action by the state might be appropriate. The department would be required, *based on available funding*, to develop and maintain a written assessment ~~for each animal, plant, or insect on the list~~ of the most appropriate options for eradication ~~or~~, control, *or management of high priority invasives on the list*, and to include specified information in the assessment if the use of pesticides would be among the appropriate responses. Certain state agencies would be required to participate in the preparation of the assessment and the department would be required to hold public hearings. The bill would require the department to notify the Governor, the governing boards of affected cities and counties, and county

agricultural commissioners if an ~~animal, plant, or insect~~ *invasive* on the list has entered the state, and, if the use of a pesticide is the preferred eradication ~~and~~, control, *or management* response, to advise the Governor and provide the Governor with a copy of the assessment. The department would also be required to, among other things, notify certain local governmental entities and officers, notify the public of specified health information, hold public hearings, and establish a telephone hotline, if the department determines that an ~~invasive animal, plant, or insect~~ has entered the state, ~~the state has declared an emergency~~, and the use of a pesticide is the selected response. *The bill would require the department to seek federal funds for the implementation of this act.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Chapter 4.5 (commencing with Section 5260) is
2 added to Part 1 of Division 4 of the Food and Agricultural Code,
3 to read:

4
5 CHAPTER 4.5. INVASIVE PEST PLANNING

6
7 5260. The Legislature hereby finds and declares both of the
8 following:

9 (a) Global travel, global trade, and climate change are introducing
10 nonnative animals, plants, ~~and insects~~ *insects, and diseases* to
11 California.

12 (b) The State of California should undertake advance planning
13 on whether and how to address those nonnative animals, plants,
14 ~~and insects~~ *insects, and diseases* that are a threat to the state's
15 public health, environment, or economy.

16 (c) *The Legislature fully recognizes that any prediction of which*
17 *invasives will enter California cannot be precise because of the*
18 *many entry mechanisms.*

19 5260.5. *For the purpose of this chapter, "invasive" means (a)*
20 *nonnative animals, plants, insects, and diseases and (b) classes of*
21 *similar nonnative animals, plants, insects, and diseases.*

22 5261. The department shall develop and maintain a list of
23 ~~invasive animals, plants, and insects~~ *invasives* that have a
24 reasonable likelihood of entering California for which an

1 eradication ~~or control~~, *control, or management* action by the state
2 might be appropriate. In developing the list, the department shall
3 consider any invasive ~~animal, plant, or insect~~ identified by the
4 federal government for which an ~~emergency eradication or control~~
5 *eradication, control, or management* action might be undertaken
6 by the federal government if the state did not act.

7 5262. (a) ~~For each animal, plant, or insect on the list developed~~
8 ~~pursuant to Section 5261~~ *Based on available funding*, the
9 department shall develop and maintain a written assessment of the
10 most appropriate options for ~~eradication or control of the animal,~~
11 ~~plant, or insect.~~ *eradication, control, or management of high*
12 *priority invasives on the list prepared pursuant to Section 5261.*
13 *In determining which invasives are high priority and in developing*
14 *the most appropriate options for eradication, control, or*
15 *management, the department shall consult with the United States*
16 *Department of Agriculture, the University of California, and others*
17 *in the scientific and research community. In implementing this*
18 *chapter, the department may undertake or contract for scientific*
19 *research with the University of California or other institutions of*
20 *higher learning.*

21 (b) If the department determines that the use of pesticides would
22 be among the more appropriate responses, the assessment shall
23 contain a discussion of all of the following:

24 (1) *The consequences of not eradicating, controlling, or*
25 *managing the invasive.*

26 ~~(1)~~

27 (2) The pesticides that would likely be the most appropriate.

28 ~~(2)~~

29 (3) The concentrations of those pesticides.

30 ~~(3)~~

31 (4) How often pesticide use would be necessary.

32 ~~(4)~~

33 (5) The method of application.

34 ~~(5)~~

35 (6) A list of each active ingredient and inert material.

36 ~~(6)~~

37 (7) A summary of up-to-date scientific information on the
38 impacts of the pesticide and its inert materials on all of the
39 following:

40 (A) Healthy children and adults.

1 (B) Children and adults with compromised health.

2 (C) Domestic animals.

3 (D) Fish and wildlife.

4 (E) The environment.

5 (c) The State Department of Public Health, the Department of
6 Fish and Game, the Office of Environmental Health Hazard
7 Assessment, and the Department of Pesticide Regulation shall
8 participate in the preparation of the assessment *in their areas of*
9 *expertise*. The Office of Environmental Health Hazard Assessment
10 shall include an analysis of the risks of using the pesticide and its
11 inert material.

12 (d) In developing the assessment, the department shall hold
13 public hearings and establish a process for submittal of public
14 comment. Following the public hearing, the department shall
15 reassess the appropriateness of the response and may revise the
16 response and may hold additional public hearings.

17 (e) The assessment shall include a characterization of the number
18 of and the nature of the public comments received pursuant to
19 subdivision (d).

20 (f) The department shall make the assessment available to the
21 public, including making it available on the department's Internet
22 Web site.

23 5263. If the department determines that an ~~invasive animal,~~
24 ~~plant, or insect~~ identified on the list developed pursuant to Section
25 5261 has entered the state, the department shall notify the
26 Governor, the governing boards of affected cities and counties,
27 and county agricultural commissioners.

28 5264. If the department determines that an ~~invasive animal,~~
29 ~~plant, or insect~~ has entered the state and the use of a pesticide is
30 the preferred ~~eradication and control,~~ *control, or management*
31 response, the department shall advise the Governor and provide
32 the Governor with a copy of the assessment for that ~~animal, plant,~~
33 ~~or insect~~ *invasive*. If an assessment has not been prepared for that
34 ~~animal, plant, or insect~~ *invasive*, the department, the State
35 Department of Public Health, the Department of Fish and Game,
36 the Office of Environmental Health Hazard Assessment, and the
37 Department of Pesticide Regulation shall advise the Governor of
38 the lack of an assessment and advise the Governor of the best
39 available options.

1 5265. If the department determines that an ~~invasive animal,~~
2 ~~plant, or insect~~ has entered the state and the state has declared an
3 ~~emergency with respect to that animal, plant, or insect,~~ and the use
4 of a pesticide is the selected response, the department shall do all
5 of the following:

6 (a) Notify the governing boards of affected cities and counties
7 and their agricultural commissioners and health officers.

8 (b) Notify the public of all of the following:

9 (1) The existence of the ~~invasive animal, plant, or insect.~~

10 (2) The consequences of not eradicating ~~or controlling,~~
11 *controlling, or managing* the ~~invasive animal, plant, or insect.~~

12 (3) The active and inert pesticides to be used.

13 (4) The method or methods of applying the pesticide.

14 (5) The implications of the use of the pesticide and the inert
15 ingredients on human health, domestic animals, fish and wildlife,
16 and the environment.

17 (c) Hold public hearings in the areas affected in advance of any
18 pesticide application.

19 (d) Establish a telephone hotline for the public to report adverse
20 health consequences and a medical process to evaluate and respond
21 to adverse health consequences.

22 5266. *The department shall seek federal funds for the*
23 *implementation of this chapter.*

Date of Hearing: April 1, 2008

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Jared Huffman, Chair
AB 2763 (Laird) - As Introduced: February 22, 2008

SUBJECT : Invasive Pests: Planning

SUMMARY : Requires the state Department of Agriculture (Department) to develop and maintain a list of invasive animals, plants, and insects likely to enter California. Requires the Department to plan for appropriate responses to these possible pests. Specifically, this bill :

- 1) Requires the Department to develop and maintain a list of invasive animals, plants, and insects (invasives) likely to enter California for which state eradication or control action may be appropriate. The Department must consider invasives likely to be identified by the federal government for response if the state does not act.
- 2) Requires the Department to develop and maintain a written assessment of the most appropriate options for eradication or control of the invasive. Other state environmental, health, and resource agencies are to participate in the assessment. Requires the Department to hold public hearings and take public comment and post assessments on the Internet.
- 3) Requires, if the Department determines pesticides may be among the most appropriate responses, the assessment:
 - a) List likely pesticides and their concentration, and frequency and method of application.
 - b) List each active and inert ingredient of likely pesticides.
 - c) A summary of up to date scientific information on impact on all the following:
 - i) Healthy children and adults,
 - ii) Children and adults with compromised health,
 - iii) Domestic animals,

- iv) Fish and wildlife, and,
 - v) The environment.
- 4) Requires the Department, in developing the assessment, to hold public hearings and provide for submittal of public comments. The assessment must include a summary of the public comments, and shall be made available on the Internet. Following the hearing, the Department must reassess the appropriateness of the response and may revise the response and hold additional public hearings
 - 5) Requires the Office of Environmental Health Hazard Assessment (OEHHA) to include an analysis of risks of using the pesticide and its inert material.
 - 6) Sets up a process for the Department if an identified invasive enters the state including notification of the Governor, local elected officials, and county agricultural commissioners.
 - 7) Requires the department, if it determines an invasive has entered the state, and the use of a pesticide is the preferred response, to advise the governor and provide a copy of the assessment. If there is no assessment, other related state agencies must advise the Governor about the best available options.
 - 8) Requires that, if an emergency is declared by the state with respect to an invasive and a pesticide is the selected response, the department shall do all the following:
 - a) Notify local elected officials and commissioners.
 - b) Notify the public with specified information about the invasive, consequences of not eradicating or controlling it, all ingredients in the pesticide to be used, and methods proposed, and implications for health and the environment of the use.
 - c) Hold public hearings in the areas in advance of any application.
 - d) Establish a telephone hotline for the public to report adverse health effects and a medical process to evaluate and respond to those effects.

EXISTING LAW:

- 1) Authorizes the Director of the Department of Food and Agriculture to control and eradicate pests.
- 2) Establishes emergency authority for the Director to follow an expedited process to eradicate a pest.

- 3) Requires specified public notice and notice to physicians regarding spraying of pesticides.
- 4) Establishes the Light Brown Apple Moth program, pursuant to SB 556 (Wiggins, Chapter 190, Statutes of 2007) in the Department. Requires the Department to report to the Legislature annually, beginning on January 10, 2008, on its expenditures, progress, and priorities in combating the Light Brown Apple Moth.
- 5) Provides that the Department of Pesticide Regulation (DPR) regulates pesticide sales and use.

FISCAL EFFECT : Unknown.

COMMENTS :

1) Purpose: The bill is sponsored by the author, who points out that numerous fruits and plants are regularly imported into California. Unfortunately, one of the risks of this market is the introduction of non-native and invasive pests. Imported products are subject to inspection; however, invasive pests often elude these inspections and are introduced into the state. California, a world leader in agriculture, needs to prepare for the likely introduction of global invasives.

2) Background : Last year, a retired entomologist in Berkeley trapped a Light Brown Apple Moth (LBAM) in his backyard. This LBAM find alarmed federal, state, and local agricultural officials. The moth has proven to be a pervasive pest in its native Australia and areas where it has migrated (including New Zealand and Hawaii). The pest has been found in several California counties - primarily in the Bay Area and Monterey Bay region. The Department, in conjunction with the United States Department of Agriculture (USDA), developed a plan designed to eradicate the insect from the state. Last year, that program included quarantine, and ground and aerial applications of control agents including pheromones. Aerial application proved controversial in Monterey and Santa Cruz counties. The 2008 CDEFA program proposes to spray in the Bay

Area - including Golden Gate Park, Alameda County, and Marin County. At a hearing of this Committee in Marin County in February, the Chair raised questions about the decision-making process leading to aerial application, the safety of the aerial spray materials, and full disclosure of the material proposed for spraying.

3) Support: The Marin County Board of Supervisors supports this bill as a way to improve advanced planning and assessment of invasive pests.

4) Related legislation:

AB 2764 (Hancock) Prohibits the Secretary of Food and Agriculture from approving the application of a pesticide in

an urban area, unless the Governor has proclaimed a state of emergency. This bill was referred to the Agriculture Committee.

AB 2765 (Huffman) Sets new limits on the Secretary of Food and Agriculture's emergency pest eradication powers with respect to aerial spraying in urban areas. Requires a public hearing and bars emergency spraying in an urban area unless there is full disclosure of all elements in any pesticide product, and a certification of the safety of the product by state health officials. This bill was referred to the Agriculture Committee.

AB 2760 (Leno) Requires an Environmental Impact Report be completed before the state Department of Food and Agriculture can apply pesticide in an urban area for the eradication of the LBAM. This bill was referred to the Natural Resources Committee.

AB 2892 (Swanson) Requires voter approval of aerial spraying of pesticide. This bill was double-referred to Elections and Redistricting Committee and Agriculture Committee.

5)Emergency authority of Director: This measure includes provisions relating to the emergency authorities of the Director, as does AB 2765. The author intends to remove that overlap prior to this bill being heard in the next policy committee.

6)Double-referral: This measure has been double-referred to the

Agriculture Committee and should be re-referred to that Committee following its consideration in this Committee

REGISTERED SUPPORT / OPPOSITION :

Support

Marin County Board of Supervisors

Opposition

None on file.

Analysis Prepared by : Kate Riley/ E.S. & T.M. / (916)
319-3965

ASSEMBLY BILL

No. 2764

Introduced by Assembly Member Hancock

February 22, 2008

An act to add Section 5765 to the Food and Agricultural Code, relating to pests.

LEGISLATIVE COUNSEL'S DIGEST

AB 2764, as introduced, Hancock. Pests: eradication: use of pesticide: declaration of state of emergency.

Existing law, the California Emergency Services Act, grants the Governor the power to proclaim a state of emergency under certain circumstances.

Existing law authorizes the Secretary of Food and Agriculture, by regulation, to proclaim any area within the state an eradication area with respect to a pest, prescribe the boundaries of the area, and name the pest or hosts of the pest that are known to exist within the area, together with the means or methods that are to be used to eradicate or control the pest.

This bill would prohibit the secretary to undertake or provide for the application of a pesticide in an urban area to effectuate an eradication project unless the Governor has proclaimed a state of emergency.

Vote: majority. 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 5765 is added to the Food and
- 2 Agricultural Code, to read:

1 5765. Notwithstanding any other provision of law, the secretary
2 shall not undertake or provide for the application of a pesticide in
3 an urban area to effectuate an eradication project pursuant to this
4 article unless the Governor has proclaimed a state of emergency
5 pursuant to Section 8625 of the Government Code.

O

ASSEMBLY BILL

No. 2765

Introduced by Assembly Member Huffman

February 22, 2008

An act to amend Sections 5771 and 5776 of the Food and Agricultural Code, relating to pests.

LEGISLATIVE COUNSEL'S DIGEST

AB 2765, as introduced, Huffman. Pest eradication: aerial use of pesticide: public hearing: notice.

Existing law authorizes the Secretary of Food and Agriculture, by regulation, to proclaim any area within the state an eradication area with respect to a pest, prescribe the boundaries of the area, and name the pest or hosts of the pest that are known to exist within the area, together with the means or methods that are to be used to eradicate or control the pest. The secretary or county agricultural commissioner, when the secretary proclaims an eradication project in an urban area, is required to notify residents and physicians practicing in the area, and the local broadcast and print media, before aerially applying a pesticide to effect the eradication.

This bill would additionally require the secretary or commissioner, before the aerial application of a pesticide, to conduct at least one public hearing to consider all alternatives to aerial application of a pesticide and to seek certification of the safety of all elements of the proposed pesticide by an appropriate state department or agency that is not part of the Department of Food and Agriculture.

Existing law requires the notice to the residents, physicians, and media to contain specified information, including the type of pesticide to be applied.

This bill would also require the notice to include a list of every ingredient in the pesticide, including its common and scientific name and chemical formulation.

Vote: majority. 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 5771 of the Food and Agricultural Code
2 is amended to read:

3 5771. When the secretary proclaims an eradication project in
4 an urban area pursuant to Article 4 (commencing with Section
5 5761), the secretary or the commissioner, pursuant to this article,
6 shall ~~notify~~ *do all of the following before aerially applying a*
7 *pesticide to effect the eradication:*

8 (a) *Conduct at least one public hearing in the area to consider*
9 *all alternatives to aerial application of a pesticide.*

10 (b) *Seek certification of the safety of all elements of any*
11 *proposed pesticide by an appropriate state department or agency*
12 *that is not part of the department.*

13 (c) *Notify residents and physicians practicing in the area, and*
14 *the local broadcast and print media, before aerially applying a*
15 *pesticide to effect the eradication.*

16 SEC. 2. Section 5776 of the Food and Agricultural Code is
17 amended to read:

18 5776. The notice distributed pursuant to this article shall contain
19 all of the following:

20 (a) The date and approximate time of all proposed pesticide
21 applications in the eradication area.

22 (b) The type of pesticide to be applied.

23 (c) Any health and safety precautions that should be taken.

24 (d) A telephone number and address of public health personnel
25 who are familiar with the eradication program.

26 (e) *A list of every ingredient in the pesticide, including its*
27 *common and scientific name and chemical formulation.*

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AMENDED IN ASSEMBLY APRIL 8, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2892

Introduced by Assembly Member Swanson

February 22, 2008

An act to add Section ~~5765~~ 5766 to the Food and Agricultural Code, relating to pests.

LEGISLATIVE COUNSEL'S DIGEST

AB 2892, as amended, Swanson. Pests: eradication: aerial spraying of pesticide: voter consent.

Existing law authorizes the Secretary of Food and Agriculture, by regulation, to proclaim any area within the state an eradication area with respect to a pest, prescribe the boundaries of the area, and name the pest or hosts of the pest that are known to exist within the area, together with the means or methods which are to be used to eradicate or control the pest. The secretary is required to notify specified persons and entities before aeriually applying a pesticide to effect the eradication of a pest if the eradication project is in an urban area.

This bill would require the secretary, if the secretary determines that it is necessary to apply a pesticide aeriually in a proclaimed pest eradication area that includes an urban area, to first obtain the consent of $\frac{2}{3}$ of the registered voters of the affected cities and counties *who participate in the election*. The bill would require the secretary to consult with the elections officials of the affected cities and counties concerning the most appropriate and expedient manner of conducting an election to obtain the consent. The local elections officials would be required to proceed with the conduct of the election, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section ~~5765~~ 5766 is added to the Food and
2 Agricultural Code, to read:

3 ~~5765.~~

4 5766. (a) Notwithstanding any other provision of law, if the
5 secretary determines that it is necessary to apply a pesticide aerially
6 in a proclaimed pest eradication area that includes an urban area,
7 the secretary shall first obtain the consent of two-thirds of the
8 registered voters of the affected cities and counties *who participate*
9 *in the election conducted pursuant to subdivision (b)* in order to
10 be able to conduct the aerial application.

11 (b) In order to obtain the consent required by subdivision (a),
12 the secretary shall consult with the elections officials of the affected
13 cities and counties concerning the most appropriate and expedient
14 manner of conducting an election, which may include a mail ballot
15 election, to obtain that consent and the local elections officials
16 shall proceed with the conduct of that election.

17 SEC. 2. If the Commission on State Mandates determines that
18 this act contains costs mandated by the state, reimbursement to
19 local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.

O

AB 2892

Date of Hearing: April 10, 2008

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Curren D. Price, Chair
AB 2892 (Swanson) - As Amended: April 8, 2008

SUBJECT : Pests: eradication: aerial spraying of pesticide:
voter consent.

SUMMARY : Requires approval by two-thirds of voters in an
affected area before pesticide can be applied aeriaily in a pest
eradication area that includes an urban area. Specifically,
this bill :

- 1) Provides that if the Secretary of Food and Agriculture
(Secretary) determines that it is necessary to apply a
pesticide aeriaily in a proclaimed pest eradication area that
includes an urban area, the Secretary shall first obtain the
consent of two-thirds of the registered voters who participate
in the election of the affected cities and counties in order
to be able conduct the aerial application.
- 2) Specifies that, in order to obtain this consent, the Secretary
shall consult with local elections officials of the affected
cities and counties concerning the most appropriate and
expedient manner of conducting an election, which may include
a mail ballot election, to obtain that consent. Requires the
local elections officials to conduct that election.

EXISTING LAW :

- 1) Allows the Secretary to enforce quarantine, eradication, and
other regulations as necessary to exterminate or prevent the
spread of any pest which is not generally distributed within
the state. Permits these regulations to proclaim any portion
of the state to be an eradication area with respect to the
pest, to prescribe the boundaries of such area, and to name
the pest and the hosts of the pest which are known to exist
within the area, together with the means or methods which are
to be used in the eradication or control of the pest.
- 2) Requires the Secretary to notify residents and physicians
practicing in the area, and the local broadcast and print
media, before aeriaily applying a pesticide as part of an
eradication project if the project is in an urban area.
- 3) Requires voter approval in order for a number of actions to
take place, including the following:

- a) An amendment to the state Constitution;
- b) An imposition or increase of various types of local taxes and fees;
- c) Issuance of certain types of bonds;
- d) Formation of certain special districts; and
- e) Sale of a public utility.

FISCAL EFFECT : Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS :

1) Purpose of the Bill : According to the author:

Currently, the California Department of Food and Agriculture (CDFA) is undertaking a wide-spread and long-term program of aerial spraying in the Bay Area to contain the Light Brown Apple Moth (LBAM). CDFA claims that the pheromone treatment scheduled for use (a.k.a. "Checkmate") is safe.

However, aerial spraying of Checkmate in parts of the Bay Area last year resulted in several hundred claims of health problems, as well as reports of dead pets and wild animals. The Department has not provided any information that explains the causes of these claims.

Additionally, CDFA has not made public any information that proves that the pesticide has been properly tested for toxicity in long-term human exposure to the chemicals, particularly in high density urban areas. It has also failed to fully demonstrate that other less toxic, environmentally sensitive, non-spray measures, much like those currently used for similar pests in California, would not be effective.

CDFA has also stated that its goal is to eradicate the pest. However, the Department has not presented evidence that LBAM is or has the imminent potential to cause significant economic damage. Furthermore, numerous prominent experts have stated that pheromone treatments can not eradicate, but only contain pests.

Despite these issues, and despite the protests of community members and even many municipalities, CDFA is moving forward with its plan to conduct a multi-year spraying program in the Bay Area.

Previous experiences with DDT and spraying for the Mediterranean Fruit Fly have shown the enormous health impacts untested spraying can have on communities. The citizens of California have a right to play a part in any decision that may well affect their health and well being. This bill thus would require that the Department of Food and Agriculture first obtain the consent of 2/3 of the registered voters of affected cities and counties if the

spraying program includes any urban areas.

Connecting authorization of spraying to the consent of registered voters ensures that the State makes residents' health and safety a priority. This effectively will require CDFA to provide sufficient information and input opportunities to assuage concerns, thereby obtaining the necessary level of community support to win passage.

Note that the method and timing of the election will be decided in consultation between the Secretary of Agriculture and local election officials.

2) Light Brown Apple Moth (LBAM) : The United States Department of Agriculture's (USDA) web site provides the following information about the LBAM:

The [LBAM], *Epiphyas postvittana* (Tortricidae), is a native pest of Australia and is now widely distributed New Zealand, the United Kingdom, Ireland, and New Caledonia. Although it was reported in Hawaii in the late 1800s, a recent LBAM detection in California is the first on the United States mainland. USDA confirmed the detection of LBAM in Alameda County, California on March 22, 2007. The California Department of Food and Agriculture (CDFA) aggressively surveyed the area to discover the extent to

the infestation and identified the pest in 11 additional counties. Intense control activities have contained LBAM within the initial detection area, and effectively eradicated the pest from Napa and Los Angeles counties.

LBAM is of particular concern because it can damage a wide range of crops and other plants including California's prized cypress as well as redwoods, oaks and many other varieties commonly found in California's urban and suburban landscaping, public parks and natural environment. The list of agricultural crops that could be damaged by this pest includes grapes, citrus, stone fruit (peaches, plums, nectarines, cherries, apricots) and many others. The complete "host list" contains well over 1,000 plant species and more than 250 fruits and vegetables.

In response to the detection of the LBAM, the USDA and CDFA began an eradication program that has included aerial application of a pheromone treatment known as Checkmate. In 2007, Checkmate was applied aeriually over parts of Monterey and Santa Cruz Counties. According to CDFA, further aerial treatments are planned for late spring or early summer of this year.

3) Arguments in Support : According to StopTheSpray.ORG:

AB 2892 (Swanson) recognizes the rights of the people of California to determine personal exposure to toxic chemicals. This bill . . . protects citizens' constitutional right of informed consent by requiring the CDFA to obtain a community's approval before conducting aerial spraying of pesticides over an urban area. The requirement that approval of affected residents be obtained ensures that the State will have to make the full

disclosures required to convince voters to consent to a spray action and that the types of top-down presentations and manipulation of information that have characterized the LBAM campaign will take place in the public arena for all affected voters to assess.

4)Arguments in Opposition : According to the Family Winemakers of California:

Family Winemakers opposes AB 2892 for the following reasons:

1. The Secretary of the Department of Food and Agriculture and the Governor have the emergency authority to act expeditiously against new invasive pests. Requiring voter consent undermines that authority and the ability of the state to act quickly. The 2/3rds vote requirement sets a substantial threshold that is unlikely to be met. This will serve as a defacto barrier to all aerial spraying.
2. California agriculture, inclusive of commodity crops, specialty crops (like winegrapes), nurseries and the cut flowers are constantly at risk from new invasive pests. Experience gathered over the years strongly suggests that swift action is needed to prevent new pests from becoming established and cause harm to growers and native plants. Holding a local election will add substantial delay and create longer-term harm and costs.
3. California has a substantial body of law that deals with public health and environmental issues. Subjecting rational government action to a direct vote of the people will make it very difficult to respond in a timely manner. It will also set a legislative precedent that could lead to other direct democracy decision-making.

AB 2892 would slow or stop response by the state to invasive pest infestations. This will increase economic damage caused by invasive pests.

5)Related Legislation : AB 2760 (Leno) requires the preparation of an environmental impact report before the application of pesticide in an urban area for the eradication of LBAM. AB 2760 is pending in the Assembly Natural Resources Committee.

AB 2764 (Hancock) prohibits the Secretary of the CDFA from providing for the application of a pesticide in an urban area to effectuate an eradication project unless the Governor has proclaimed a state of emergency. AB 2764 is pending in the Assembly Agriculture Committee.

AB 2765 (Huffman) requires the Secretary of the CDFA or the county agricultural commissioner, before the aerial application of a pesticide, to conduct at least one public hearing to consider alternatives to aerial application of a pesticide and to seek certification of the safety of all elements of the proposed pesticide by an appropriate state

department or agency that is not part of the CDFA. AB 2765 also requires that residents, physicians, and media be given a list of every ingredient in a pesticide that is to be applied

aerially in an urban area. AB 2765 is pending in the Assembly Agriculture Committee.

ACR 117 (Laird) requests state departments and agencies involved in the LBAM eradication effort to respond to health concerns by providing the public with independent analysis of specified impacts on public health and the environment, to provide information on how they intend to respond to the citizen health complaints arising from their 2007 LBAM eradication activities, and to provide the public with independent analysis to ensure that the elements of the CDFA's 2008 Action Plan to eradicate the LBAM are not harmful to human health and the environment, among other provisions. ACR 117 is pending in the Assembly Agriculture Committee.

SCR 87 (Migden) requests the CDFA to impose a moratorium on any aerial spraying that may be a part of the department's eradication campaign of the LBAM until the department can demonstrate that the pheromone compound it intends to use is both safe to humans and effective at eradicating the LBAM. SCR 87 is pending in the Senate Agriculture Committee.

6)Double-Referral : This bill has been double-referred to the Assembly Agriculture Committee. Due to upcoming committee deadlines, if this bill is approved in committee today, it would need to be heard in the Assembly Agriculture Committee next week. As a result, to ensure that this bill can be heard in both policy committees before the upcoming deadline, this bill should not be amended in committee today. If it is the author's or committee's desire that this bill be amended, this bill should be passed out of committee with the author's commitment to amend the bill in the Assembly Agriculture Committee.

REGISTERED SUPPORT / OPPOSITION :

Support

Coalition of California Cities to Stop the Spray
StopTheSpray.ORG
Approximately 400 individuals

Opposition

Family Winemakers of California

Analysis Prepared by : Ethan Jones / E. & R. / (916) 319-2094

OAKLAND CITY COUNCIL


 City Attorney

 FILED
 OFFICE OF THE CITY CLERK
 OAKLAND

RESOLUTION No. _____ C.M.S.

2006 APR 10 PM 5:29

Introduced by Councilmember Nadel, Councilmember Brunner and Councilmember Reid

A RESOLUTION IN SUPPORT OF THE FOLLOWING STATE ASSEMBLY BILLS REGARDING PESTICIDE SPRAYING AND DIRECTING CITY LOBBYISTS TO ADVOCATE FOR PROVISIONS IN THESE BILLS THAT ENSURE INDEPENDENT VERIFICATION OF PROGRAM SAFETY PRIOR TO ANY AERIAL PESTICIDE APPLICATION OVER URBAN AREAS:

- A) AB2760 (LENO) WOULD REQUIRE THAT AN ENVIRONMENTAL IMPACT REPORT BE COMPLETED BEFORE THE STATE AGRICULTURAL DEPARTMENT COULD APPLY PESTICIDES IN URBAN AREAS FOR THE ERADICATION OF THE LIGHT BROWN APPLE MOTH.**
- B) AB2763 (LAIRD) WOULD REQUIRE THE STATE DEPARTMENT OF FOOD AND AGRICULTURE TO PREPARE A LIST OF INVASIVE SPECIES THAT MIGHT ENTER THE STATE AND PREPARE A WRITTEN ASSESSMENT FOR THE HIGH PRIORITY SPECIES, DESCRIBING ERADICATION, CONTROL, MANAGEMENT, INCLUDING WHICH CHEMICALS MIGHT BE USED.**
- C) AB2764 (HANCOCK) WOULD REQUIRE THAT THE GOVERNOR DECLARE A STATE OF EMERGENCY IN ORDER TO CONDUCT AERIAL PESTICIDE SPRAYING OVER URBAN AREAS.**
- D) AB2765 (HUFFMAN) WOULD REQUIRE A PUBLIC HEARING AND THE EXAMINATION OF ALTERNATIVES TO AERIAL SPRAYING BEFORE ANY DECISION TO DO SO. IT ALSO REQUIRES FULL DISCLOSURE OF ALL PESTICIDE COMPONENTS AND TO SEEK INDEPENDENT CERTIFICATION OF THEIR SAFETY.**
- E) AB 2892 (SWANSON) WOULD REQUIRE THAT ANY PROPOSED PESTICIDE SPRAYING PROGRAM OVER URBAN AREAS ACQUIRE THE CONSENT OF TWO-THIRDS OF THE REGISTERED VOTERS THROUGH AN ELECTION PROCESS. WHEREAS, THE CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE PLANS TO BEGIN AN AERIAL SPRAYING PROGRAM WITH THE EXPRESSED GOAL OF ERADICATING THE LIGHT BROWN APPLE MOTH; AND**

WHEREAS, the Light Brown Apple Moth (LBAM) is a pest subject to Federal and State quarantine and eradication orders; and

WHEREAS, there is a confirmed presence of LBAM in Alameda County; and

WHEREAS, the California Department of Food and Agriculture commenced an aerial pesticide spraying program in 2007, affecting parts of Santa Cruz and Monterey Counties;

and

WHEREAS, the State plans to expand it aerial spraying program to Alameda County in the summer of 2008;

WHEREAS, on March 4, 2008 Oakland City Council unanimously adopted a resolution opposing this aerial spraying program due to the absence of a reliable, independent study determining the safety of this program; and

WHEREAS, several State legislators have introduced AB 2760 (Leno), AB 2763 (Laird), AB 2764 (Hancock), AB2765 (Huffman), AB 2892 (Swanson), which are related to the LBAM eradication effort; now, therefore, be it

RESOLVED: that the City of Oakland declares its support for all five bills, and be it

FURTHER RESOLVED: that the City Administrator and the City's state lobbyist are directed to advocate the City's position to the State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE: BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST _____

LaTonda Simmons
City Clerk and Clerk of the Council,
City of Oakland, California