

AMENDED IN SENATE MAY 8, 2002

**SENATE BILL**

**No. 1628**

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**Introduced by Senator Sher**

February 21, 2002

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~~An act to add Section 1021.10 to the Code of Civil Procedure, relating to the attorney's fees. An act to amend Section 40432 of the Public Resources Code, and to amend Section 186 of the Water Code, relating to resources, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1628, as amended, Sher. ~~Attorney's fees: environmental enforcement~~ Resources: litigation.

(1) Existing law requires the Attorney General to represent the California Integrated Waste Management Board and the state in litigation concerning affairs of the board, unless the Attorney General chooses to represent another state agency that is a party to the action. In that case, the legal counsel of the board is required to represent the board.

This bill, instead, would authorize the board to (a) request the Attorney General to represent the board in addition to the other state agency, (b) contract for the services of private counsel, or (c) authorize the legal counsel of the board to represent the board. The bill would authorize the Attorney General to represent both the board and the other state agency upon receiving the written consent of both the board and the other state agency to that representation.

(2) Existing law requires the Attorney General to represent the State Water Resources Control Board and the state in litigation concerning affairs of the board, unless another state agency that is represented by

*the Attorney General is a party to the action. In that case, the legal counsel of the board is required to represent the board.*

*This bill, instead, would authorize the board to (a) request the Attorney General to represent the board, a regional water quality control board, or both, in addition to the other state agency, (b) contract for the services of private counsel for those purposes, or (c) authorize the legal counsel of the board to represent the board, or the regional board, or both. The bill would authorize the Attorney General to represent the board, regional board, or both, and the other state agency upon receiving the written consent of both the board and the other state agency to that representation.*

*(3) The bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing law contains various provisions relating to the protection of the environment.~~

~~This bill would require a court to award reasonable costs, including attorney’s fees, to the Attorney General, district attorney, or city attorney who prevails in a civil action to enforce an environmental law, as defined. In determining the amount of the fee award, the bill would authorize the court to consider all facts and circumstances, including the economic resources of the party against whom the attorney’s fees have been requested.~~

Vote: majority 2/3. 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 1021.10 is added to the Code of Civil~~  
2     ~~SECTION 1. Section 40432 of the Public Resources Code is~~  
3     ~~amended to read:~~  
4     40432. The Attorney General shall represent the board and  
5     the state in litigation concerning affairs of the board, unless the  
6     Attorney General ~~chooses to represent~~ *represents* another state  
7     agency ~~which~~ *that* is a party to the action. In that case, *the Attorney*  
8     *General may represent the board with the written consent of the*  
9     *board and the other state agency, the board may contract for the*  
10    *services of private counsel, or the legal counsel of the board shall*  
11    *may represent the board, subject to Section 11040 of the*  
12    *Government Code. Sections 11041, 11042, and 11043 of the*  
13    *Government Code are not applicable to the board.*



1 SEC. 2. Section 186 of the Water Code is amended to read:

2 186. (a) The board shall have ~~such~~ any powers, and may  
3 employ ~~such~~ any legal counsel and other personnel and assistance,  
4 ~~as that~~ may be necessary or convenient for the exercise of its duties  
5 authorized by law.

6 For

7 (b) For the purpose of administration, the board shall organize  
8 itself, with the approval of the Governor, in the manner it deems  
9 necessary properly to segregate and conduct the work of the board.  
10 The work of the board shall be divided into at least two divisions,  
11 known as the Division of Water Rights and the Division of Water  
12 Quality. The board shall appoint a chief of each division, who shall  
13 supervise the work thereof and act as technical adviser to the board  
14 on functions under his or her jurisdiction.

15 The

16 (c) The Attorney General shall represent the board, or any  
17 affected regional water quality control board, or both the board  
18 and the regional board, and the state in litigation concerning  
19 affairs of the board, or a regional board, or both, unless the  
20 Attorney General represents another state agency, ~~represented by~~  
21 ~~the Attorney General~~, that is a party to the action. In ~~such~~ that  
22 case, the Attorney General may represent the board, the regional  
23 board, or both, with the written consent of the board and the other  
24 state agency, the board may contract for the services of private  
25 counsel to represent the board, the regional board, or both, or the  
26 legal counsel of the board ~~shall~~ may represent the board, the  
27 regional board, or both, subject to Section 11040 of the  
28 Government Code. Sections 11041, 11042, and 11043 of the  
29 Government Code are not applicable to the ~~State Water Resources~~  
30 ~~Control Board~~ board. The legal counsel of the board shall advise  
31 and furnish legal services, except representation in litigation, to  
32 the regional boards upon their request.

33 SEC. 3. This act is an urgency statute necessary for the  
34 immediate preservation of the public peace, health, or safety  
35 within the meaning of Article IV of the Constitution and shall go  
36 into immediate effect. The facts constituting the necessity are:

37 In order to protect the public health, safety, and welfare by  
38 reducing certain state litigation costs, at the earliest possible time,  
39 it is necessary that this act take effect immediately.

40 Procedure, to read:



1 ~~1021.10.—(a) Notwithstanding any other provision of law, if~~  
2 ~~the Attorney General, a district attorney, or a city attorney brings~~  
3 ~~a civil action to enforce an environmental law, and prevails against~~  
4 ~~one or more opposing parties, the court shall award reasonable~~  
5 ~~costs, including attorney fees. In determining the amount of the fee~~  
6 ~~award, a court may consider all facts and circumstances, including~~  
7 ~~the economic resources of the party against whom the attorney’s~~  
8 ~~fees have been requested.~~

9 ~~(b) (1) For purposes of this section, “environmental law”~~  
10 ~~means a state law that is (1) intended to protect against~~  
11 ~~contamination of air, water, or land, (2) intended to protect or~~  
12 ~~preserve natural resources, including vegetation or wildlife, or (3)~~  
13 ~~intended to protect public health by preventing or reducing~~  
14 ~~exposure to harmful agents in the environment or in consumer~~  
15 ~~products.~~

16 ~~(2) The court shall determine for purposes of this section if a~~  
17 ~~law is an environmental law upon a motion by the Attorney~~  
18 ~~General, district attorney, or city attorney requesting costs.~~

