

AMENDED IN ASSEMBLY APRIL 24, 2006

AMENDED IN ASSEMBLY MARCH 30, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2485

Introduced by Assembly Members Jones and Laird
(Coauthors: Assembly Members *Berg*, *Chan*, *Koretz*, *Pavley*, and
***Wolk*)**

(Coauthor: Senator Kuehl)

February 23, 2006

An act to add Sections 4501 and 12003.2 to the Fish and Game Code, and to add and repeal Article 5.5 (commencing with Section 18750) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to fish and game.

LEGISLATIVE COUNSEL'S DIGEST

AB 2485, as amended, Jones. Fish and game: sea otters.

(1) Existing law prohibits the taking of any marine mammal, including any sea otter, whale, dolphin, porpoise, seal, and sea lion, except in accordance with the federal Marine Mammal Protection Act of 1972 and specified federal regulations. Existing law prohibits the taking or possession of any fully protected mammal, including any southern sea otter. Existing law imposes a specified misdemeanor fine or imprisonment for these regulations.

This bill would state the Legislature's intent to enact legislation to establish a research program focused on reducing sea otter mortality from nonpoint source pollution, and developing treatment technologies for pathogens affecting sea otter mortality, contingent upon appropriations administered through the California Coastal

Conservancy. The bill would modify the fines and penalties for a violation of the above described existing laws relating to marine mammals and fully protected mammals to provide for the imposition of a fine of up to \$25,000 for each unlawful taking in violation, of those provisions. The bill would also make Legislative findings and declarations relating to cat feces and sea otter mortality, and would require any cat litter offered for sale in the state to contain a statement to discourage the flushing of cat litter in toilets, or disposing of it outdoors in gutters or storm drains, for the purposes of promoting better water quality. Because a violation of this requirement would be a crime under other, existing provisions that generally make violations of the Fish and Game Code a crime, the bill would create a state-mandated local program by creating a new crime.

(2) Under existing law, a person who deposits in, or permits to pass into, or place where it can pass into, the waters of this state specified substances, including any substance or material deleterious to fish, plant life, or bird life, is subject to specified civil penalties.

This bill would include in those provisions any substance or material deleterious to mammals.

(3) Under the existing Personal Income Tax Law, taxpayers are allowed to contribute amounts in excess of their tax liability for the support of specified funds.

This bill would additionally allow taxpayers to designate on their tax returns that a specified amount in excess of their tax liability be transferred to the California Sea Otter Fund, which would be created by this bill. It would require money in that fund, upon appropriation by the Legislature, to be allocated to the Department of Fish and Game for the purposes of establishing a sea otter fund, as prescribed, and to the California Coastal Conservancy for research and programs related to sea otters.

The bill would require the Franchise Tax Board, *when another voluntary contribution checkoff is removed*, to revise the form of tax returns to provide for the designation and would allow, upon appropriation by the Legislature, the Franchise Tax Board and the Controller to receive a portion of the funds designated to cover costs incurred in collecting and administering the funds.

The bill would provide that these provisions shall remain in effect only until January 1 of the ~~fifth~~ 5th taxable year following the first appearance of the California Sea Otter Fund on the tax return, unless a later enacted statute deletes or extends that date. If, in the ~~second~~ 2nd

calendar year, the Franchise Tax Board estimates by September 1 that the contributions made on returns filed in that calendar year will be less than \$250,000 or otherwise, as specified, then this article would be repealed with respect to taxable years beginning on or after January 1 of that calendar year.

(4) 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 no reimbursement is required by this act for a specified reason.

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. It is the intent of the Legislature to enact
2 legislation to establish a research program focused on reducing
3 sea otter mortality from nonpoint source pollution, and
4 developing treatment technologies for pathogens affecting sea
5 otter mortality, contingent upon appropriations administered
6 through the California Coastal Conservancy.

7 SEC. 2. Section 4501 is added to the Fish and Game Code, to
8 read:

9 4501. (a) The Legislature finds and declares that several
10 types of nonpoint source pollution are harmful to sea otters, and
11 that scientific studies point to links between cat feces, the
12 pathogen T-gondii, and sea otter mortality. The Legislature
13 further finds and declares that efforts to reduce the flushing of cat
14 litter and cat feces are steps toward better water quality in the sea
15 otters' natural habitat.

16 (b) Any cat litter offered for sale in this state shall contain the
17 following statement:

18 "Encouraging your cat to use an indoor litter box, or properly
19 disposing of outdoor cat feces, is beneficial to overall water
20 quality. Please do not flush cat litter in toilets or dispose of it
21 outdoors in gutters or storm drains."

22 SEC. 3. Section 5650 of the Fish and Game Code is amended
23 to read:

1 5650. (a) Except as provided in subdivision (b), it is unlawful
2 to deposit in, permit to pass into, or place where it can pass into
3 the waters of this state any of the following:

4 (1) Any petroleum, acid, coal or oil tar, lampblack, aniline,
5 asphalt, bitumen, or residuary product of petroleum, or
6 carbonaceous material or substance.

7 (2) Any refuse, liquid or solid, from any refinery, gas house,
8 tannery, distillery, chemical works, mill, or factory of any kind.

9 (3) Any sawdust, shavings, slabs, or edgings.

10 (4) Any factory refuse, lime, or slag.

11 (5) Any cocculus indicus.

12 (6) Any substance or material deleterious to fish, plant life,
13 mammals, or bird life.

14 (b) This section does not apply to a discharge or a release that
15 is expressly authorized pursuant to , and in compliance with, the
16 terms and conditions of a waste discharge requirement pursuant
17 to Section 13263 of the Water Code or a waiver issued pursuant
18 to subdivision (a) of Section 13269 of the Water Code issued by
19 the State Water Resources Control Board or a regional water
20 quality control board after a public hearing, or that is expressly
21 authorized pursuant to, and in compliance with, the terms
22 conditions of a federal permit for which the State Water
23 Resources Control Board or a regional water quality control
24 board has, after a public hearing, issued a water quality
25 certification pursuant to Section 13160 of the Water Code. This
26 section does not confer additional authority on the State Water
27 Resources Control Board, a regional water quality control board,
28 or any other entity.

29 (c) It shall be an affirmative defense to a violation of this
30 section if the defendant proves, by a preponderance of the
31 evidence, all of the following:

32 (1) The defendant complied with all applicable state and
33 federal laws and regulations requiring that the discharge or
34 release be reported to a government agency.

35 (2) The substance or material did not enter the waters of the
36 state or a storm drain that discharges into the waters of the state.

37 (3) The defendant took reasonable and appropriate measures to
38 effectively mitigate the discharge or release in a timely manner.

1 (d) The affirmative defense in subdivision (c) does not apply
2 and may not be raised in an action for civil penalties or injunctive
3 relief pursuant to Section 5650.1.

4 (e) The affirmative defense in subdivision (c) does not apply
5 and may not be raised by any defendant who has on two prior
6 occasions in the preceding five years, in any combination within
7 the same county in which the case is prosecuted, either pleaded
8 nolo contendere, been convicted of a violation of this section, or
9 suffered a judgment for a violation of this section or Section
10 5650.1. This subdivision shall apply only to cases filed on or
11 after January 1, 1997.

12 (f) The affirmative defense in subdivision (c) does not apply
13 and may not be raised by the defendant in any case in which a
14 district attorney, city attorney, or Attorney General alleges, and
15 the court finds, that the defendant acted willfully.

16 SEC. 4. Section 12003.2 is added to the Fish and Game Code,
17 to read:

18 12003.2. Notwithstanding Section 12002 or 12008, the
19 punishment for any violation of Sections 4500 or 4700 is a fine
20 of not more than twenty-five thousand dollars (\$25,000) per
21 unlawful taking, imprisonment in the county jail for the period
22 prescribed in Section 12002 or 12008, or both the fine and
23 imprisonment.

24 SEC. 4. Article 5.5 (commencing with Section 18750) is
25 added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and
26 Taxation Code, to read:

27
28 Article 5.5. California Sea Otter Fund
29

30 18750. (a) An individual may designate on the tax return that
31 a contribution in excess of the tax liability, if any, be made to the
32 California Sea Otter Fund, established by Section 18751. That
33 designation is to be used as a voluntary checkoff on the tax
34 return.

35 (b) The contributions shall be in full dollar amounts and may
36 be made individually by each signatory on a joint return.

37 (c) A designation shall be made for any taxable year on the
38 initial return for that taxable year, and once made is irrevocable.
39 If payments and credits reported on the return, together with any
40 other credits associated with the taxpayer's account, do not

1 exceed the taxpayer's liability, the return shall be treated as
2 though no designation has been made. If that no designee is
3 specified, the contribution shall be transferred to the General
4 Fund, after reimbursement of the direct actual costs of the
5 Franchise Tax Board for the collection and administration of
6 funds under this article.

7 (d) If an individual designates a contribution to more than one
8 account or fund listed on the tax return, and the amount available
9 for designation is insufficient to satisfy the total amount
10 designated, the contribution shall be allocated among the
11 designees on a pro rata basis.

12 (e) ~~The~~ *When, on or after January 1, 2007, a voluntary*
13 *contribution checkoff included on the tax return is removed, the*
14 Franchise Tax Board shall revise the forms of the return to
15 include a space labeled the "California Sea Otter Fund" to allow
16 for the designation permitted. The forms shall include in the
17 instruction information that the contribution may be in the
18 amount of one dollar (\$1) or more and that the contribution shall
19 be used to support increased investigation, prevention, and
20 enforcement actions to decrease sea otter mortality, and to
21 provide for research and programs related to sea otters.

22 (f) A deduction shall be allowed under Article 6 (commencing
23 with Section 17201) of Chapter 3 of Part 10 for any contribution
24 made pursuant to subdivision (a).

25 18751. There is in the State Treasury the California Sea Otter
26 Fund to receive contributions made pursuant to Section 18750.
27 The Franchise Tax Board shall notify the Controller of both the
28 amount of money paid by taxpayers in excess of their tax liability
29 and the amount of refund money that taxpayers have designated
30 pursuant to Section 18750 to be transferred to the California Sea
31 Otter Fund. The Controller shall transfer from the Personal
32 Income Tax Fund to the California Sea Otter Fund an amount not
33 in excess of the sum of the amounts designated by individuals
34 pursuant to Section 18750 for payment into that fund. It is the
35 intent of the Legislature that the ~~2008 tax return includes~~ *tax year*
36 *2008 tax return include* a space for the California Sea Otter
37 Fund.

38 18752. All money transferred to the California Sea Otter
39 Fund, upon appropriation by the Legislature, shall be allocated as
40 follows:

1 (a) To the Franchise Tax Board and the Controller for
2 reimbursement of all costs incurred by the Franchise Tax Board
3 and the Controller in connection with their duties under this
4 article.

5 (b) Fifty percent of the revenues remaining after allocation
6 pursuant to subdivision (a), to the Department of Fish and Game
7 for the purposes of establishing a sea otter fund to be used within
8 the department's index coding system for increased investigation,
9 prevention, and enforcement actions to decrease sea otter
10 mortality, to provide research programs, education programs, and
11 related assistance with sea otter recovery.

12 (c) Fifty percent of the revenues remaining after allocation
13 pursuant to subdivision (a), to the California Coastal
14 Conservancy for research and programs related to sea otters,
15 including, but not limited to, sea otter mortality, and pathogens
16 and treatment technologies as they pertain to sea otter mortality.

17 18753. (a) This article shall remain in effect only until
18 January 1 of the fifth taxable year following the first appearance
19 of the California Sea Otter Fund on the tax return, and as of that
20 date is repealed, unless a later enacted statute, that is enacted
21 before the applicable date, deletes or extends that date.

22 (b) If, in the second calendar year after the first taxable year
23 the California Sea Otter Fund appears on the tax return, the
24 Franchise Tax Board estimates by September 1 that contributions
25 described in this article made on returns filed in that calendar
26 year will be less than two hundred fifty thousand dollars
27 (\$250,000), or the adjusted amount specified in subdivision (c)
28 for subsequent taxable years, as may be applicable, then this
29 article is repealed with respect to taxable years beginning on or
30 after January 1 of that calendar year. The Franchise Tax Board
31 shall estimate the annual contribution amount by September 1 of
32 each year using the actual amounts known to be contributed and
33 an estimate of the remaining year's contribution.

34 (c) For each calendar year, beginning with the third calendar
35 year that the California Sea Otter Fund appears on the tax return,
36 the Franchise Tax Board shall adjust, on or before September 1
37 of that calendar year, the minimum estimated contribution
38 amount specified in subdivision (b) as follows:

39 (1) The minimum estimated contribution amount for the
40 calendar year shall be an amount equal to the product of the

1 minimum estimated contribution amount for the prior September
2 1 multiplied by the inflation factor adjustment as specified in
3 paragraph (2) of subdivision (h) of Section 17041, rounded off to
4 the nearest dollar.

5 (2) The inflation factor adjustment used for the calendar year
6 shall be based on the figures for the percentage change in the
7 California Consumer Price Index received on or before August 1
8 of the calendar year pursuant to paragraph (1) of subdivision (h)
9 of Section 17041.

10 (d) Notwithstanding the repeal of this article, any contribution
11 amounts designated pursuant to this article prior to its repeal
12 shall continue to be transferred and disbursed in accordance with
13 this article as in effect immediately prior to that repeal.

14 SEC. 5. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the
19 penalty for a crime or infraction, within the meaning of Section
20 17556 of the Government Code, or changes the definition of a
21 crime within the meaning of Section 6 of Article XIII B of the
22 California Constitution.