

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY APRIL 24, 2006

AMENDED IN ASSEMBLY MARCH 30, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2485**

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

~~(Coauthor: Senator Kuehl)~~ *Coauthors: Senators Figueroa and Kuehl*

February 23, 2006

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An act to ~~add Sections 4501 and 12003.2 to amend Section 5650 of, and 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 *or other causes* 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~~ *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~~ *one of 2 alternative statements regarding the proper disposal of cat feces*. 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~~ *designation* is removed, to revise the form of tax returns to provide for the designation *created by this bill*, 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 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 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 *or other causes*  
5 affecting sea otter mortality, contingent upon appropriations  
6 administered 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~~ *either of the following statements:*

18 ~~“Encouraging~~

19 (1) *“Encouraging your cat to use an indoor litter box, or*  
20 *properly disposing of outdoor cat feces, is beneficial to overall*

1 water quality. Please do not flush cat litter in toilets or dispose of  
2 it outdoors in gutters or storm drains.”

3 (2) *A general statement that encourages the disposal of cat*  
4 *feces in trash and discourages flushing cat feces in toilets or*  
5 *drains.*

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

8 5650. (a) Except as provided in subdivision (b), it is unlawful  
9 to deposit in, permit to pass into, or place where it can pass into  
10 the waters of this state any of the following:

11 (1) Any petroleum, acid, coal or oil tar, lampblack, aniline,  
12 asphalt, bitumen, or residuary product of petroleum, or  
13 carbonaceous material or substance.

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

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

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

18 (5) Any cocculus indicus.

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

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

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

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

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

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

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

11 (e) The affirmative defense in subdivision (c) does not apply  
12 and may not be raised by any defendant who has on two prior  
13 occasions in the preceding five years, in any combination within  
14 the same county in which the case is prosecuted, either pleaded  
15 nolo contendere, been convicted of a violation of this section, or  
16 suffered a judgment for a violation of this section or Section  
17 5650.1. This subdivision shall apply only to cases filed on or  
18 after January 1, 1997.

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

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

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

31 ~~SEC. 4.~~

32 SEC. 5. Article 5.5 (commencing with Section 18750) is  
33 added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and  
34 Taxation Code, to read:

35  
36 Article 5.5. California Sea Otter Fund

37  
38 18750. (a) An individual may designate on the tax return that  
39 a contribution in excess of the tax liability, if any, be made to the  
40 California Sea Otter Fund, established by Section 18751. That

1 designation is to be used as a voluntary checkoff on the tax  
2 return.

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

5 (c) A designation shall be made for any taxable year on the  
6 initial return for that taxable year, and once made is irrevocable.  
7 If payments and credits reported on the return, together with any  
8 other credits associated with the taxpayer's account, do not  
9 exceed the taxpayer's liability, the return shall be treated as  
10 though no designation has been made. If that no designee is  
11 specified, the contribution shall be transferred to the General  
12 Fund, after reimbursement of the direct actual costs of the  
13 Franchise Tax Board for the collection and administration of  
14 funds under this article.

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

20 (e) ~~When, on or after January 1, 2007, a~~ *another* voluntary  
21 ~~contribution checkoff included on the tax return is removed, the~~  
22 ~~contribution designation is removed from the tax return, the~~  
23 Franchise Tax Board shall revise the ~~forms~~ *form* of the return to  
24 include a space labeled the "California Sea Otter Fund" to allow  
25 for the designation permitted. The forms shall include in the  
26 instruction information that the contribution may be in the  
27 amount of one dollar (\$1) or more and that the contribution shall  
28 be used to support increased investigation, prevention, and  
29 enforcement actions to decrease sea otter mortality, and to  
30 provide for research and programs related to sea otters.

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

34 18751. There is in the State Treasury the California Sea Otter  
35 Fund to receive contributions made pursuant to Section 18750.  
36 The Franchise Tax Board shall notify the Controller of both the  
37 amount of money paid by taxpayers in excess of their tax liability  
38 and the amount of refund money that taxpayers have designated  
39 pursuant to Section 18750 to be transferred to the California Sea  
40 Otter Fund. The Controller shall transfer from the Personal

1 Income Tax Fund to the California Sea Otter Fund an amount not  
2 in excess of the sum of the amounts designated by individuals  
3 pursuant to Section 18750 for payment into that fund. ~~It is the~~  
4 ~~intent of the Legislature that the tax year 2008 tax return include~~  
5 ~~a space for the California Sea Otter Fund.~~

6 18752. All money transferred to the California Sea Otter  
7 Fund, upon appropriation by the Legislature, shall be allocated as  
8 follows:

9 (a) To the Franchise Tax Board and the Controller for  
10 reimbursement of all costs incurred by the Franchise Tax Board  
11 and the Controller in connection with their duties under this  
12 article.

13 (b) Fifty percent of the revenues remaining after allocation  
14 pursuant to subdivision (a), to the Department of Fish and Game  
15 for the purposes of establishing a sea otter fund to be used within  
16 the department's index coding system for increased investigation,  
17 prevention, and enforcement actions to decrease sea otter  
18 mortality, to provide research programs, education programs, and  
19 related assistance with sea otter recovery.

20 (c) Fifty percent of the revenues remaining after allocation  
21 pursuant to subdivision (a), to the California Coastal  
22 Conservancy for research and programs related to sea otters,  
23 including, but not limited to, *reducing* sea otter mortality, and  
24 pathogens and treatment technologies as they pertain to sea otter  
25 mortality.

26 18753. (a) This article shall remain in effect only until  
27 January 1 of the fifth taxable year following the first appearance  
28 of the California Sea Otter Fund on the tax return, and as of that  
29 date is repealed, unless a later enacted statute, that is enacted  
30 before the applicable date, deletes or extends that date.

31 (b) If, in the second calendar year after the first taxable year  
32 the California Sea Otter Fund appears on the tax return, the  
33 Franchise Tax Board estimates by September 1 that contributions  
34 described in this article made on returns filed in that calendar  
35 year will be less than two hundred fifty thousand dollars  
36 (\$250,000), or the adjusted amount specified in subdivision (c)  
37 for subsequent taxable years, as may be applicable, then this  
38 article is repealed with respect to taxable years beginning on or  
39 after January 1 of that calendar year. The Franchise Tax Board  
40 shall estimate the annual contribution amount by September 1 of

1 each year using the actual amounts known to be contributed and  
2 an estimate of the remaining year’s contribution.

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

8 (1) The minimum estimated contribution amount for the  
9 calendar year shall be an amount equal to the product of the  
10 minimum estimated contribution amount for the prior September  
11 1 multiplied by the inflation factor adjustment as specified in  
12 paragraph (2) of subdivision (h) of Section 17041, rounded off to  
13 the nearest dollar.

14 (2) The inflation factor adjustment used for the calendar year  
15 shall be based on the figures for the percentage change in the  
16 California Consumer Price Index received on or before August 1  
17 of the calendar year pursuant to paragraph (1) of subdivision (h)  
18 of Section 17041.

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

23 ~~SEC. 5.~~

24 SEC. 6. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the  
29 penalty for a crime or infraction, within the meaning of Section  
30 17556 of the Government Code, or changes the definition of a  
31 crime within the meaning of Section 6 of Article XIII B of the  
32 California Constitution.

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