

AMENDED IN SENATE AUGUST 22, 2006
AMENDED IN SENATE AUGUST 9, 2006
AMENDED IN SENATE AUGUST 7, 2006
AMENDED IN SENATE JUNE 19, 2006
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

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

February 23, 2006

An act 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 water and wastewater treatment technologies for pathogens or other causes affecting sea otter mortality. 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 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. The bill 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~~ *improving the near-shore ocean ecosystem, including, but not limited to, program activities to reduce sea otter mortality.*

The bill would require the Franchise Tax Board, when another voluntary contribution 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 the Franchise Tax Board determines that the amount of contributions estimated to be received during a calendar year will not equal or exceed the minimum contribution amount, as defined, for the calendar year, these provisions 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 water and wastewater treatment technologies for
5 pathogens or other causes affecting sea otter mortality.

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

8 4501. (a) The Legislature finds and declares that several
9 types of nonpoint source pollution are harmful to sea otters, and
10 that scientific studies point to links between cat feces, the
11 pathogen T-gondii, and sea otter mortality. The Legislature
12 further finds and declares that efforts to reduce the flushing of cat
13 litter and cat feces are steps toward better water quality in the sea
14 otters' natural habitat.

1 (b) Any cat litter offered for sale in this state shall contain one
2 of the following statements:

3 (1) “Encouraging your cat to use an indoor litter box, or
4 properly disposing of outdoor cat feces, is beneficial to overall
5 water quality. Please do not flush cat litter in toilets or dispose of
6 it outdoors in gutters or storm drains.”

7 (2) A general statement that encourages the disposal of cat
8 feces in trash and discourages flushing cat feces in toilets or
9 disposing of them in drains.

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

12 5650. (a) Except as provided in subdivision (b), it is unlawful
13 to deposit in, permit to pass into, or place where it can pass into
14 the waters of this state any of the following:

15 (1) Any petroleum, acid, coal or oil tar, lampblack, aniline,
16 asphalt, bitumen, or residuary product of petroleum, or
17 carbonaceous material or substance.

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

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

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

22 (5) Any cocculus indicus.

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

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

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

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

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

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

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

14 (e) The affirmative defense in subdivision (c) does not apply
15 and may not be raised by any defendant who has on two prior
16 occasions in the preceding five years, in any combination within
17 the same county in which the case is prosecuted, either pleaded
18 nolo contendere, been convicted of a violation of this section, or
19 suffered a judgment for a violation of this section or Section
20 5650.1. This subdivision shall apply only to cases filed on or
21 after January 1, 1997.

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

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

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

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

Article 5.5. California Sea Otter Fund

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3 18750. (a) An individual may designate on the tax return that
4 a contribution in excess of the tax liability, if any, be made to the
5 California Sea Otter Fund, established by Section 18751. That
6 designation is to be used as a voluntary checkoff on the tax
7 return.
8 (b) The contributions shall be in full dollar amounts and may
9 be made individually by each signatory on a joint return.
10 (c) A designation shall be made for any taxable year on the
11 initial return for that taxable year, and once made is irrevocable.
12 If payments and credits reported on the return, together with any
13 other credits associated with the taxpayer’s account, do not
14 exceed the taxpayer’s liability, the return shall be treated as
15 though no designation has been made. If that no designee is
16 specified, the contribution shall be transferred to the General
17 Fund, after reimbursement of the direct actual costs of the
18 Franchise Tax Board for the collection and administration of
19 funds under this article.
20 (d) If an individual designates a contribution to more than one
21 account or fund listed on the tax return, and the amount available
22 for designation is insufficient to satisfy the total amount
23 designated, the contribution shall be allocated among the
24 designees on a pro rata basis.
25 (e) When another voluntary contribution designation is
26 removed from the tax return, the Franchise Tax Board shall
27 revise the form of the return to include a space labeled the
28 “California Sea Otter Fund” to allow for the designation
29 permitted. The forms shall include in the instruction information
30 that the contribution may be in the amount of one dollar (\$1) or
31 more and that the contribution shall be used to support increased
32 investigation, prevention, and enforcement actions to decrease
33 sea otter mortality, and to provide for research and programs
34 related to sea otters.
35 (f) A deduction shall be allowed under Article 6 (commencing
36 with Section 17201) of Chapter 3 of Part 10 for any contribution
37 made pursuant to subdivision (a).
38 18751. There is in the State Treasury the California Sea Otter
39 Fund to receive contributions made pursuant to Section 18750.
40 The Franchise Tax Board shall notify the Controller of both the

1 amount of money paid by taxpayers in excess of their tax liability
2 and the amount of refund money that taxpayers have designated
3 pursuant to Section 18750 to be transferred to the California Sea
4 Otter Fund. The Controller shall transfer from the Personal
5 Income Tax Fund to the California Sea Otter Fund an amount not
6 in excess of the sum of the amounts designated by individuals
7 pursuant to Section 18750 for payment into that fund.

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

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

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

22 (c) Fifty percent of the revenues remaining after allocation
23 pursuant to subdivision (a), to the California Coastal
24 Conservancy for research and programs related to ~~sea otters,~~
25 ~~including, but not limited to, reducing sea otter mortality, and~~
26 ~~pathogens and water and wastewater treatment technologies as~~
27 ~~they pertain to sea otter mortality. *improving the near-shore*~~
28 ~~*ocean ecosystem, including, but not limited to, program activities*~~
29 ~~*to reduce sea otter mortality. The programs may also address*~~
30 ~~*pathogens and water and wastewater treatment technologies.*~~

31 18753. (a) This article shall remain in effect only until
32 January 1 of the fifth taxable year following the first appearance
33 of the California Sea Otter Fund on the tax return, and as of that
34 date is repealed, unless a later enacted statute, that is enacted
35 before the applicable date, deletes or extends that date.

36 (b) (1) By September 1 of the second calendar year beginning
37 after the first taxable year the California Sea Otter Fund appears
38 on a tax return and by September 1 of each subsequent calendar
39 year that the California Sea Otter Fund appears on a tax return,
40 the Franchise Tax Board shall do both of the following:

1 (A) Determine the minimum contribution amount required to
2 be received during the next calendar year for the fund to appear
3 on the tax return for the taxable year that includes that next
4 calendar year.

5 (B) Determine whether the amount of contributions estimated
6 to be received during the calendar year will equal or exceed the
7 minimum contribution amount determined by the Franchise Tax
8 Board for the calendar year pursuant to subparagraph (A). The
9 Franchise Tax Board shall estimate the amount of contributions
10 to be received by using the actual amounts received and an
11 estimate of the contributions that will be received by the end of
12 that calendar year.

13 (2) If the Franchise Tax Board determines the amount of
14 contributions estimated to be received during a calendar year will
15 not equal or exceed the minimum contribution amount for the
16 calendar year, this article is repealed with respect to taxable years
17 beginning on or after January 1 of that calendar year.

18 (3) For purposes of this section, “minimum contribution
19 amount” for a calendar year means two hundred fifty thousand
20 dollars (\$250,000) for the second calendar year after the first
21 taxable year for which the California Sea Otter Fund appears on
22 the tax return, or the minimum contribution amount adjusted
23 pursuant to subdivision (c).

24 (c) For each calendar year, beginning with the third calendar
25 year that the California Sea Otter Fund appears on the tax return,
26 the Franchise Tax Board shall adjust, on or before September 1
27 of that calendar year, the minimum contribution amount specified
28 in subdivision (b) as follows:

29 (1) The minimum contribution amount for the calendar year
30 shall be an amount equal to the product of the minimum
31 contribution amount for the prior calendar year multiplied by the
32 inflation factor adjustment as specified in paragraph (2) of
33 subdivision (h) of Section 17041, rounded off to the nearest
34 dollar.

35 (2) The inflation factor adjustment used for the calendar year
36 shall be based on the figures for the percentage change in the
37 California Consumer Price Index received on or before August 1
38 of the calendar year pursuant to paragraph (1) of subdivision (h)
39 of Section 17041.

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

5 SEC. 6. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the
10 penalty for a crime or infraction, within the meaning of Section
11 17556 of the Government Code, or changes the definition of a
12 crime within the meaning of Section 6 of Article XIII B of the
13 California Constitution.

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