

AMENDED IN SENATE JUNE 14, 2010
AMENDED IN SENATE MARCH 15, 2010
AMENDED IN SENATE JULY 1, 2009
AMENDED IN SENATE JUNE 25, 2009
AMENDED IN ASSEMBLY JUNE 1, 2009
AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 846

Introduced by Assembly Member Torrico

February 26, 2009

An act to add Section 12999.7 to the Food and Agricultural Code, to add Sections 25196.5 and 42402.6 to the Health and Safety Code, to add Section 6437 to the Labor Code, and to add Section 13363 to the Water Code, relating to civil and administrative penalties.

LEGISLATIVE COUNSEL'S DIGEST

AB 846, as amended, Torrico. State agencies: civil and administrative penalties.

The Administrative Procedure Act contains provisions governing the conduct of administrative adjudication for state agencies.

This bill would require the Director of Pesticide Regulation, the Department of Toxic Substances Control, the State Air Resources Board, the Department of Industrial Relations, and the State Water Resources Control Board to update the maximum and minimum amounts of specified civil and administrative penalties for inflation or deflation using the Consumer Price Index, as provided. The bill would require;

~~if an administrative or civil penalty below the maximum monetary level authorized pursuant to those provisions is sought, that the penalty be assessed, at a minimum, at a level that recovers non-de minimis economic benefits, as defined, derived by the violator, except as specified. Because local air districts, county agricultural commissioners, and unified program agencies would be subject to this requirement, this bill would impose 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. This act shall be known, and may be cited, as the
- 2 California Civil Penalties Inflation Supplement and Enforcement
- 3 Act of 2010.
- 4 SEC. 2. Section 12999.7 is added to the Food and Agricultural
- 5 Code, to read:
- 6 12999.7. (a) (1) The director shall update, by February 15,
- 7 2011, and on January 1 every four years thereafter, all civil and
- 8 administrative penalties imposed pursuant to this article, Section
- 9 14027, and Article 5 (commencing with Section 11891) of Chapter
- 10 4 of Division 6 to adjust the maximum and minimum amounts
- 11 specified in those provisions for inflation or deflation, as
- 12 established by the amount by which the Consumer Price Index for
- 13 the month of June of the year prior to the adjustment exceeds, or
- 14 is less than, the Consumer Price Index for June of the calendar
- 15 year in which legislation was last enacted establishing or amending
- 16 the amount of the penalty.
- 17 (2) The amount of any penalties determined pursuant to this
- 18 subdivision shall be rounded as follows:
- 19 (A) To the nearest multiple of ten dollars (\$10) in the case of a
- 20 penalty less than or equal to one hundred dollars (\$100).

1 (B) To the nearest multiple of one hundred dollars (\$100) in the
2 case of a penalty greater than one hundred dollars (\$100) but less
3 than or equal to one thousand dollars (\$1,000).

4 (C) To the nearest multiple of one thousand dollars (\$1,000) in
5 the case of a penalty greater than one thousand dollars (\$1,000)
6 but less than or equal to ten thousand dollars (\$10,000).

7 (D) To the nearest multiple of five thousand dollars (\$5,000) in
8 the case of a penalty greater than ten thousand dollars (\$10,000)
9 but less than or equal to one hundred thousand dollars (\$100,000).

10 (E) To the nearest multiple of ten thousand dollars (\$10,000)
11 in the case of a penalty greater than one hundred thousand dollars
12 (\$100,000) but less than or equal to two hundred thousand dollars
13 (\$200,000).

14 (F) To the nearest multiple of twenty-five thousand dollars
15 (\$25,000) in the case of a penalty greater than two hundred
16 thousand dollars (\$200,000).

17 (3) Inflation adjustments made pursuant to this subdivision shall
18 be exempt from the requirements of Chapter 3.5 (commencing
19 with Section 11340) of Part 1 of Division 3 of Title 2 of the
20 Government Code.

21 (b) (1) If the director or a commissioner seeks to impose an
22 administrative or civil penalty ~~below the maximum monetary level~~
23 ~~authorized~~ pursuant to this article, Section 14027, or Article 5
24 (commencing with Section 11891) of Chapter 4 of Division 6, as
25 adjusted by subdivision (a), the director or a commissioner shall
26 calculate, and make express findings concerning, the non-de
27 minimis economic benefits, if any, derived by the violator from
28 the acts that constitute the violation. At a minimum, liability shall
29 be assessed at a level that recovers those economic benefits, unless
30 the director or a commissioner makes express findings that
31 document that good faith efforts to comply or inability to pay
32 justify a reduction and that the liability assessed will maintain the
33 deterrent effect of the penalty. *The amount of economic benefits*
34 *shall be calculated using the BEN automated tool developed by*
35 *the United States Environmental Protection Agency. If use of that*
36 *tool is determined not to be practical, another equally reliable*
37 *means of determining the amount of economic benefits shall be*
38 *used.*

39 (2) As used in this subdivision, the following terms have the
40 following meanings:

1 (A) “De minimis” means an economic benefit that is likely to
2 be small, and substantially disproportionate resources would be
3 required to determine the amount and assess the penalty above
4 that amount. The director or a commissioner may adopt rules and
5 regulations to determine specific de minimis categories.

6 ~~(B) “Economic benefit” means the benefit to the violator from~~
7 ~~delaying or avoiding costs associated with compliance. “Economic~~
8 ~~benefit” also means profits from illegal activities, including, but~~
9 ~~not limited to, activities undertaken without a permit required by~~
10 ~~law to engage in the activity.~~

11 (B) (i) *“Economic benefit” means the benefit to the violator*
12 *from delayed costs or avoided costs associated with compliance,*
13 *including, but not limited to, operating and maintenance costs for*
14 *pollution control equipment and annual periodic costs including*
15 *the cost of leasing monitoring equipment. “Economic benefit”*
16 *also means profits from illegal activities, including, but not limited*
17 *to, activities undertaken without a permit required by law to engage*
18 *in the activity.*

19 (ii) *“Avoided costs,” as used in this subparagraph, means those*
20 *expenditures that the violator did not and will not make. The*
21 *economic benefit of avoided costs are the amounts of return on*
22 *the unspent moneys that reasonably could have been realized by*
23 *the violator during the period of noncompliance and the present*
24 *value of the avoided costs.*

25 (iii) *“Delayed costs,” as used in this subparagraph, means those*
26 *expenditures that have been deferred by the violator’s failure to*
27 *comply, but that will be paid by the violator in the same or greater*
28 *amounts. The economic benefit of delayed costs are the amounts*
29 *of return on the unspent moneys that reasonably could have been*
30 *realized by the violator during the period of noncompliance.*

31 (3) This subdivision does not affect the other enforcement
32 options available to the director or a commissioner, including
33 settlements.

34 (c) The director shall report to the Legislature on the
35 implementation of this section.

36 SEC. 3. Section 25196.5 is added to the Health and Safety
37 Code, to read:

38 25196.5. (a) (1) The department shall update, by February
39 15, 2011, and on January 1 every four years thereafter, all civil
40 and administrative penalties imposed pursuant to this chapter to

1 adjust the maximum and minimum amounts specified in this
2 chapter for inflation or deflation, as established by the amount by
3 which the Consumer Price Index for the month of June of the year
4 prior to the adjustment exceeds, or is less than, the Consumer Price
5 Index for June of the calendar year in which legislation was last
6 enacted establishing or amending the amount of the penalty.

7 (2) The amount of any penalties determined pursuant to this
8 subdivision shall be rounded as follows:

9 (A) To the nearest multiple of ten dollars (\$10) in the case of a
10 penalty less than or equal to one hundred dollars (\$100).

11 (B) To the nearest multiple of one hundred dollars (\$100) in the
12 case of a penalty greater than one hundred dollars (\$100) but less
13 than or equal to one thousand dollars (\$1,000).

14 (C) To the nearest multiple of one thousand dollars (\$1,000) in
15 the case of a penalty greater than one thousand dollars (\$1,000)
16 but less than or equal to ten thousand dollars (\$10,000).

17 (D) To the nearest multiple of five thousand dollars (\$5,000) in
18 the case of a penalty greater than ten thousand dollars (\$10,000)
19 but less than or equal to one hundred thousand dollars (\$100,000).

20 (E) To the nearest multiple of ten thousand dollars (\$10,000)
21 in the case of a penalty greater than one hundred thousand dollars
22 (\$100,000) but less than or equal to two hundred thousand dollars
23 (\$200,000).

24 (F) To the nearest multiple of twenty-five thousand dollars
25 (\$25,000) in the case of a penalty greater than two hundred
26 thousand dollars (\$200,000).

27 (3) Inflation adjustments made pursuant to this subdivision shall
28 be exempt from the requirements of Chapter 3.5 (commencing
29 with Section 11340) of Part 1 of Division 3 of Title 2 of the
30 Government Code.

31 (b) (1) If the department or a unified program agency seeks to
32 impose an administrative or civil penalty ~~below the maximum~~
33 ~~monetary level authorized~~ pursuant to this chapter, as adjusted by
34 subdivision (a), the department or unified program agency shall
35 calculate, and make express findings concerning, the non-de
36 minimis economic benefits, if any, derived by the violator from
37 the acts that constitute the violation. At a minimum, liability shall
38 be assessed at a level that recovers those economic benefits, unless
39 the department or unified program agency makes express findings
40 that document that good faith efforts to comply or inability to pay

1 justify a reduction and that the liability assessed will maintain the
2 deterrent effect of the penalty. *The amount of economic benefits*
3 *shall be calculated using the BEN automated tool developed by*
4 *the United States Environmental Protection Agency. If use of that*
5 *tool is determined not to be practical, another equally reliable*
6 *means of determining the amount of economic benefits shall be*
7 *used.*

8 (2) As used in this subdivision, the following terms have the
9 following meanings:

10 (A) “De minimis” means an economic benefit that is likely to
11 be small, and substantially disproportionate resources would be
12 required to determine the amount and assess the penalty above
13 that amount. The department or a unified program agency may
14 adopt rules and regulations to determine specific de minimis
15 categories.

16 ~~(B) “Economic benefit” means the benefit to the violator from~~
17 ~~delaying or avoiding costs associated with compliance. “Economic~~
18 ~~benefit” also means profits from illegal activities, including, but~~
19 ~~not limited to, activities undertaken without a permit required by~~
20 ~~law to engage in the activity.~~

21 (B) (i) “Economic benefit” means the benefit to the violator
22 from delayed costs or avoided costs associated with compliance,
23 including, but not limited to, operating and maintenance costs for
24 pollution control equipment and annual periodic costs including
25 the cost of leasing monitoring equipment. “Economic benefit”
26 also means profits from illegal activities, including, but not limited
27 to, activities undertaken without a permit required by law to engage
28 in the activity.

29 (ii) “Avoided costs,” as used in this subparagraph, are those
30 expenditures that the violator did not and will not make. The
31 economic benefit of avoided costs are the amounts of return on
32 the unspent moneys that reasonably could have been realized by
33 the violator during the period of noncompliance and the present
34 value of the avoided costs.

35 (iii) “Delayed costs,” as used in this subparagraph, are those
36 expenditures that have been deferred by the violator’s failure to
37 comply, but that will be paid by the violator in the same or greater
38 amounts. The economic benefit of delayed costs are the amounts
39 of return on the unspent moneys that reasonably could have been
40 realized by the violator during the period of noncompliance.

1 (3) This subdivision does not affect the other enforcement
2 options available to the department or a unified program agency,
3 including settlements.

4 (c) The department shall report to the Legislature on the
5 implementation of this section.

6 SEC. 4. Section 42402.6 is added to the Health and Safety
7 Code, to read:

8 42402.6. (a) (1) The state board shall update, by February 15,
9 2011, and on January 1 every four years thereafter, all civil and
10 administrative penalties imposed pursuant to this division to adjust
11 the maximum and minimum amounts specified in this division for
12 inflation or deflation, as established by the amount by which the
13 Consumer Price Index for the month of June of the year prior to
14 the adjustment exceeds, or is less than, the Consumer Price Index
15 for June of the calendar year in which legislation was last enacted
16 establishing or amending the amount of the penalty.

17 (2) The amount of any penalties determined pursuant to this
18 subdivision shall be rounded as follows:

19 (A) To the nearest multiple of ten dollars (\$10) in the case of a
20 penalty less than or equal to one hundred dollars (\$100).

21 (B) To the nearest multiple of one hundred dollars (\$100) in the
22 case of a penalty greater than one hundred dollars (\$100) but less
23 than or equal to one thousand dollars (\$1,000).

24 (C) To the nearest multiple of one thousand dollars (\$1,000) in
25 the case of a penalty greater than one thousand dollars (\$1,000)
26 but less than or equal to ten thousand dollars (\$10,000).

27 (D) To the nearest multiple of five thousand dollars (\$5,000) in
28 the case of a penalty greater than ten thousand dollars (\$10,000)
29 but less than or equal to one hundred thousand dollars (\$100,000).

30 (E) To the nearest multiple of ten thousand dollars (\$10,000)
31 in the case of a penalty greater than one hundred thousand dollars
32 (\$100,000) but less than or equal to two hundred thousand dollars
33 (\$200,000).

34 (F) To the nearest multiple of twenty-five thousand dollars
35 (\$25,000) in the case of a penalty greater than two hundred
36 thousand dollars (\$200,000).

37 (3) Inflation adjustments made pursuant to this subdivision shall
38 be exempt from the requirements of Chapter 3.5 (commencing
39 with Section 11340) of Part 1 of Division 3 of Title 2 of the
40 Government Code.

(b) (1) If the state board or a district seeks to impose an administrative or civil penalty ~~below the maximum monetary level authorized pursuant to this division, as adjusted by subdivision (a),~~ the state board or district shall calculate, and make express findings concerning, the non-de minimis economic benefits, if any, derived by the violator from the acts that constitute the violation. At a minimum, liability shall be assessed at a level that recovers those economic benefits, unless the state board or district makes express findings that document that good faith efforts to comply or inability to pay justify a reduction and that the liability assessed will maintain the deterrent effect of the penalty. *The amount of economic benefits shall be calculated using the BEN automated tool developed by the United States Environmental Protection Agency. If use of that tool is determined not to be practical, another equally reliable means of determining the amount of economic benefits shall be used.*

(2) As used in this subdivision, the following terms have the following meanings:

(A) “De minimis” means an economic benefit that is likely to be small, and substantially disproportionate resources would be required to determine the amount and assess the penalty above that amount. The state board or a district may adopt rules and regulations to determine specific de minimis categories.

~~(B) “Economic benefit” means the benefit to the violator from delaying or avoiding costs associated with compliance. “Economic benefit” also means profits from illegal activities, including, but not limited to, activities undertaken without a permit required by law to engage in the activity.~~

(B) (i) “Economic benefit” means the benefit to the violator from delayed costs or avoided costs associated with compliance, including, but not limited to, operating and maintenance costs for pollution control equipment and annual periodic costs including the cost of leasing monitoring equipment. “Economic benefit” also means profits from illegal activities, including, but not limited to, activities undertaken without a permit required by law to engage in the activity.

(ii) “Avoided costs,” as used in this subparagraph, are those expenditures that the violator did not and will not make. The economic benefit of avoided costs are the amounts of return on the unspent moneys that reasonably could have been realized by

1 *the violator during the period of noncompliance and the present*
2 *value of the avoided costs.*

3 (iii) *“Delayed costs,” as used in this subparagraph, are those*
4 *expenditures that have been deferred by the violator’s failure to*
5 *comply, but that will be paid by the violator in the same or greater*
6 *amounts. The economic benefit of delayed costs are the amounts*
7 *of return on the unspent moneys that reasonably could have been*
8 *realized by the violator during the period of noncompliance.*

9 (3) This subdivision does not affect the other enforcement
10 options available to the state board or a district, including
11 settlements.

12 (c) The state board shall report to the Legislature on the
13 implementation of this section.

14 SEC. 5. Section 6437 is added to the Labor Code, to read:

15 6437. (a) (1) The department shall update, by February 15,
16 2011, and on January 1 every four years thereafter, all civil and
17 administrative penalties imposed pursuant to this part to adjust the
18 maximum and minimum amounts specified in this part for inflation
19 or deflation, as established by the amount by which the Consumer
20 Price Index for the month of June of the year prior to the
21 adjustment exceeds, or is less than, the Consumer Price Index for
22 June of the calendar year in which legislation was last enacted
23 establishing or amending the amount of the penalty.

24 (2) The amount of any penalties determined pursuant to this
25 subdivision shall be rounded as follows:

26 (A) To the nearest multiple of ten dollars (\$10) in the case of a
27 penalty less than or equal to one hundred dollars (\$100).

28 (B) To the nearest multiple of one hundred dollars (\$100) in the
29 case of a penalty greater than one hundred dollars (\$100) but less
30 than or equal to one thousand dollars (\$1,000).

31 (C) To the nearest multiple of one thousand dollars (\$1,000) in
32 the case of a penalty greater than one thousand dollars (\$1,000)
33 but less than or equal to ten thousand dollars (\$10,000).

34 (D) To the nearest multiple of five thousand dollars (\$5,000) in
35 the case of a penalty greater than ten thousand dollars (\$10,000)
36 but less than or equal to one hundred thousand dollars (\$100,000).

37 (E) To the nearest multiple of ten thousand dollars (\$10,000)
38 in the case of a penalty greater than one hundred thousand dollars
39 (\$100,000) but less than or equal to two hundred thousand dollars
40 (\$200,000).

1 (F) To the nearest multiple of twenty-five thousand dollars
2 (\$25,000) in the case of a penalty greater than two hundred
3 thousand dollars (\$200,000).

4 (3) Inflation adjustments made pursuant to this subdivision shall
5 be exempt from the requirements of Chapter 3.5 (commencing
6 with Section 11340) of Part 1 of Division 3 of Title 2 of the
7 Government Code.

8 (b) (1) If the division seeks to impose an administrative or civil
9 penalty ~~below the maximum monetary level authorized~~ pursuant
10 to this part, as adjusted by subdivision (a), the division shall
11 calculate, and make express findings concerning, the non-de
12 minimis economic benefits, if any, derived by the violator from
13 the acts that constitute the violation. Notwithstanding any other
14 provision of law, at a minimum, liability shall be assessed at a
15 level that recovers those economic benefits, unless the division
16 makes express findings that document that good faith efforts to
17 comply or inability to pay justify a reduction and that the liability
18 assessed will maintain the deterrent effect of the penalty. *The*
19 *amount of economic benefits shall be calculated using the BEN*
20 *automated tool developed by the United States Environmental*
21 *Protection Agency. If use of that tool is determined not to be*
22 *practical, another equally reliable means of determining the*
23 *amount of economic benefits shall be used.*

24 (2) As used in this subdivision, the following terms have the
25 following meanings:

26 (A) “De minimis” means an economic benefit that is likely to
27 be small, and substantially disproportionate resources would be
28 required to determine the amount and assess the penalty above
29 that amount. The division may adopt rules and regulations to
30 determine specific de minimis categories.

31 ~~(B) “Economic benefit” means the benefit to the violator from~~
32 ~~delaying or avoiding costs associated with compliance. “Economic~~
33 ~~benefit” also means profits from illegal activities, including, but~~
34 ~~not limited to, activities undertaken without a permit required by~~
35 ~~law to engage in the activity.~~

36 (B) (i) “Economic benefit” means the benefit to the violator
37 from delayed costs or avoided costs associated with compliance,
38 including, but not limited to, operating and maintenance costs for
39 pollution control equipment and annual periodic costs including
40 the cost of leasing monitoring equipment. “Economic benefit”

1 *also means profits from illegal activities, including, but not limited*
2 *to, activities undertaken without a permit required by law to engage*
3 *in the activity.*

4 (ii) *“Avoided costs,” as used in this subparagraph, are those*
5 *expenditures that the violator did not and will not make. The*
6 *economic benefit of avoided costs are the amounts of return on*
7 *the unspent moneys that reasonably could have been realized by*
8 *the violator during the period of noncompliance and the present*
9 *value of the avoided costs.*

10 (iii) *“Delayed costs,” as used in this subparagraph, are those*
11 *expenditures that have been deferred by the violator’s failure to*
12 *comply, but that will be paid by the violator in the same or greater*
13 *amounts. The economic benefit of delayed costs are the amounts*
14 *of return on the unspent moneys that reasonably could have been*
15 *realized by the violator during the period of noncompliance.*

16 (3) This subdivision does not affect the other enforcement
17 options available to the division, including settlements.

18 (c) The department shall report to the Legislature on the
19 implementation of this section.

20 SEC. 6. Section 13363 is added to the Water Code, to read:

21 13363. (a) (1) The state board shall update, by February 15,
22 2011, and on January 1 every four years thereafter, all civil and
23 administrative penalties imposed pursuant to this division or
24 pursuant to Section 25270.12, 25299, or 25299.76 of the Health
25 and Safety Code to adjust the maximum and minimum amounts
26 specified in those provisions for inflation or deflation, as
27 established by the amount by which the Consumer Price Index for
28 the month of June of the year prior to the adjustment exceeds, or
29 is less than, the Consumer Price Index for June of the calendar
30 year in which legislation was last enacted establishing or amending
31 the amount of the penalty.

32 (2) The amount of any penalties determined pursuant to this
33 subdivision shall be rounded as follows:

34 (A) To the nearest multiple of ten dollars (\$10) in the case of a
35 penalty less than or equal to one hundred dollars (\$100).

36 (B) To the nearest multiple of one hundred dollars (\$100) in the
37 case of a penalty greater than one hundred dollars (\$100) but less
38 than or equal to one thousand dollars (\$1,000).

1 (C) To the nearest multiple of one thousand dollars (\$1,000) in
2 the case of a penalty greater than one thousand dollars (\$1,000)
3 but less than or equal to ten thousand dollars (\$10,000).

4 (D) To the nearest multiple of five thousand dollars (\$5,000) in
5 the case of a penalty greater than ten thousand dollars (\$10,000)
6 but less than or equal to one hundred thousand dollars (\$100,000).

7 (E) To the nearest multiple of ten thousand dollars (\$10,000)
8 in the case of a penalty greater than one hundred thousand dollars
9 (\$100,000) but less than or equal to two hundred thousand dollars
10 (\$200,000).

11 (F) To the nearest multiple of twenty-five thousand dollars
12 (\$25,000) in the case of a penalty greater than two hundred
13 thousand dollars (\$200,000).

14 (3) Inflation adjustments made pursuant to this subdivision shall
15 be exempt from the requirements of Chapter 3.5 (commencing
16 with Section 11340) of Part 1 of Division 3 of Title 2 of the
17 Government Code.

18 (b) (1) If the state board, a regional board, or a unified program
19 agency seeks to impose an administrative or civil penalty ~~below~~
20 ~~the maximum monetary level authorized~~ pursuant to this division
21 or pursuant to Section 25270.12, 25299, or 25299.76 of the Health
22 and Safety Code, as adjusted by subdivision (a), the state board,
23 a regional board, or a unified program agency shall calculate, and
24 make express findings concerning, the non-de minimis economic
25 benefits, if any, derived by the violator from the acts that constitute
26 the violation. At a minimum, liability shall be assessed at a level
27 that recovers those economic benefits, unless the state board, a
28 regional board, or a unified program agency makes express findings
29 that document that good faith efforts to comply or inability to pay
30 justify a reduction and that the liability assessed will maintain the
31 deterrent effect of the penalty. This subdivision does not affect the
32 requirement to recover economic benefits from a violator, imposed
33 pursuant to subdivision (e) of Section 13385. *The amount of*
34 *economic benefits shall be calculated using the BEN automated*
35 *tool developed by the United States Environmental Protection*
36 *Agency. If use of that tool is determined not to be practical, another*
37 *equally reliable means of determining the amount of economic*
38 *benefits shall be used.*

39 (2) As used in this subdivision, the following terms have the
40 following meanings:

(A) “De minimis” means an economic benefit that is likely to be small, and substantially disproportionate resources would be required to determine the amount and assess the penalty above that amount. The state board, a regional board, or a unified program agency may adopt rules and regulations to determine specific de minimis categories.

~~(B) “Economic benefit” means the benefit to the violator from delaying or avoiding costs associated with compliance. “Economic benefit” also means profits from illegal activities, including, but not limited to, activities undertaken without a permit required by law to engage in the activity.~~

(B) (i) *“Economic benefit” means the benefit to the violator from delayed costs or avoided costs associated with compliance, including, but not limited to, operating and maintenance costs for pollution control equipment and annual periodic costs including the cost of leasing monitoring equipment. “Economic benefit” also means profits from illegal activities, including, but not limited to, activities undertaken without a permit required by law to engage in the activity.*

(ii) *“Avoided costs,” as used in this subparagraph, are those expenditures that the violator did not and will not make. The economic benefit of avoided costs are the amounts of return on the unspent moneys that reasonably could have been realized by the violator during the period of noncompliance and the present value of the avoided costs.*

(iii) *“Delayed costs,” as used in this subparagraph, are those expenditures that have been deferred by the violator’s failure to comply, but that will be paid by the violator in the same or greater amounts. The economic benefit of delayed costs are the amounts of return on the unspent moneys that reasonably could have been realized by the violator during the period of noncompliance.*

(3) This subdivision does not affect the other enforcement options available to the state board, a regional board, or a unified program agency, including settlements.

(c) Except as provided in subdivision (k) of Section 13350 and paragraph (2) of subdivision (n) of Section 13385, and in Sections 25270.12, 25299, and 25299.50 of the Health and Safety Code, proceeds from the implementation of subdivision (a) shall be deposited in the Clean Water Civil Penalty Inflation Account, which is hereby created in the General Fund, to be expended, upon

1 appropriation by the Legislature, consistent with Section 13441.
2 “Proceeds” as used in this subdivision means the amount of the
3 penalty imposed and collected that is above the amount that was
4 authorized before the maximum penalty was first adjusted pursuant
5 to subdivision (a).

6 (d) The state board shall report to the Legislature on the
7 implementation of this section.

8 SEC. 7. If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.