

AMENDED IN SENATE AUGUST 20, 2010

AMENDED IN SENATE AUGUST 17, 2009

AMENDED IN SENATE JULY 13, 2009

AMENDED IN SENATE JUNE 30, 2009

AMENDED IN ASSEMBLY APRIL 28, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 900

**Introduced by Assembly Member ~~Members De León and
De La Torre~~**

**(Coauthors: ~~Assembly Members Emmerson, Fuller, Gilmore, Salas,
and Solorio~~)**

(Principal coauthor: Senator Calderon)

February 26, 2009

~~An act to amend Sections 5100, 5101, 5103, and 5107 of, to add Chapter 2.7 (commencing with Section 348) to Division 1 of, and to repeal Section 5108 of, the Water Code, relating to water diversion. An act to amend Section 96.31 of the Revenue and Taxation Code, relating to property taxation, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 900, as amended, De León. ~~Water diversion and use: reporting.~~ *Property taxation: City of Bell: refunds for overpayment.*

Existing property tax law establishes various procedures and requirements with respect to the annual allocation of ad valorem property tax revenues derived from the ad valorem taxation of locally

assessed property. These procedures include a reduction in the allocation of ad valorem property taxes to a jurisdiction that imposes a rate in excess of the maximum rate authorized by law in amounts equal to the amount collected pursuant to the excess rate, and requires any amount subtracted from a jurisdiction's allocation to be allocated to elementary, high school, and unified school districts, as provided.

This bill would instead require, with respect to the ad valorem property taxes collected in excess of the maximum rate authorized by law in the 2007–08, 2008–09, and 2009–10 fiscal years for the City of Bell, that the City of Bell pay the County of Los Angeles an amount equal to the amount of ad valorem property taxes collected in excess of the maximum rate, and would require the County of Los Angeles to make refunds to taxpayers, as provided. This bill would require those amounts remaining after making refunds to taxpayers, as specified, to be allocated to elementary, high school, and unified school districts, as provided. This bill would require the City of Bell to reimburse the county auditor for the actual and reasonable costs incurred by the county auditor in administering these refunds and allocations. This bill would also make findings and declarations regarding the necessity of a special statute.

By imposing additional duties upon county officials in issuing refunds or reducing the allocation of ad valorem property tax revenues, 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 no reimbursement is required by this act for a specified reason.

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

~~Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the State Water Resources Control Board a prescribed statement of diversion and use. Existing law requires a statement to include specified information, including, on and after January 1, 2012, monthly records of water diversions. Under existing law, the monthly record requirement does not apply to a surface water diversion with a combined diversion capacity from a natural channel that is less than 50 cubic feet per second or to diverters using siphons in the tidal zone. Existing law subjects a person who~~

~~makes a material misstatement in connection with the filing of the diversion and use statements to administratively imposed civil penalties in the amount of \$500 for each violation.~~

~~This bill would revise the types of water diversions for which the reporting requirement does not apply, including, among other diversions, a diversion that occurs before January 1, 2009, if certain requirements are met. The bill would delete exceptions to the monthly record requirement, and revise requirements relating to the contents of the statement of diversions and use.~~

~~The bill would subject a person to civil liability if that person fails to file, as required, a diversion and use statement for a diversion or use that occurs after January 1, 2009, tampers with any measuring device, or makes a material misstatement in connection with the filing of a diversion and use statement. The board would be authorized to impose the civil liability in accordance with a specified schedule.~~

~~The bill would authorize the board and the Department of Water Resources to adopt emergency regulations for the filing of reports of water diversion or use that are required to be filed by those respective state agencies under specified statutory provisions.~~

~~The bill would make additional conforming changes and would set forth related legislative findings and declarations.~~

~~Vote: majority ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.~~

The people of the State of California do enact as follows:

1 SECTION 1. Section 96.31 of the Revenue and Taxation Code
2 is amended to read:

3 96.31. (a) For the 1985–86 fiscal year and each fiscal year
4 thereafter, no jurisdiction shall impose a property tax rate pursuant
5 to subdivision (a) of Section 93, unless it is imposed for one or
6 more of the following purposes:

7 (1) To make annual payments for the interest and principal on
8 general obligation bonds approved by the voters before July 1,
9 1978, and on bonded indebtedness for the acquisition and
10 improvement of real property approved by the voters by a
11 two-thirds vote after June 4, 1986.

12 (2) To make payments to the State of California under contracts
13 for the sale, delivery, or use of water entered into pursuant to
14 California Water Resources Development Bond Act in Chapter 8

1 (commencing with Section 12930) of Part 6 of Division 6 of the
 2 Water Code or to make payments to the United States or another
 3 public agency under voter-approved contracts for the sale, delivery,
 4 or use of water or for the repayment of voter-approved obligations
 5 for the construction, maintenance, or operation of water
 6 conservation, treatment, or distribution facilities, provided that the
 7 indebtedness was approved by the voters before July 1, 1978.

8 (3) To make payments pursuant to lease-purchase programs
 9 approved by the voters before July 1, 1978, provided that the
 10 jurisdiction imposed the property tax rate in the 1982–83 fiscal
 11 year.

12 (4) To make payments in support of pension programs approved
 13 by the voters before July 1, 1978, provided that the local agency
 14 imposed the property tax rate in the 1982–83 or 1983–84 fiscal
 15 year.

16 (5) To make payments in support of paramedic, library, or zoo
 17 programs approved by the voters before July 1, 1978, provided
 18 that the jurisdiction imposed the property tax rate in the 1982–83
 19 fiscal year.

20 (6) To make payments for the interest and principal on an
 21 indebtedness, pursuant to Section 5544.2 of the Public Resources
 22 Code, approved by the voters before July 1, 1978, provided that
 23 the local agency imposed the property tax rate in the 1982–83
 24 fiscal year.

25 (b) In the 1985–86 fiscal year and any fiscal year thereafter, a
 26 jurisdiction shall not impose a property tax rate, pursuant to
 27 subdivision (a) of Section 93, in excess of the rate it imposed in
 28 the 1982–83 or 1983–84 fiscal year. Notwithstanding the limit
 29 imposed by this subdivision, a higher property tax rate may be
 30 imposed whenever necessary to make payments for any of the
 31 purposes specified in paragraphs (1), (2), and (3) of subdivision
 32 (a). However, no property tax rate increase in excess of the rate
 33 imposed in the 1984–85 fiscal year shall be imposed if the purpose
 34 of the rate increase is to fund a reduction in the rates charged for
 35 water at the time of the property tax rate increase.

36 (c) Notwithstanding subdivisions (a) and (b), a charter city may
 37 levy an ad valorem property tax rate to make payments in support
 38 of a retirement system for fire and police employees if all of the
 39 following criteria are met:

1 (1) The retirement system is part of the city's charter and was
2 approved by the voters before July 1, 1978.

3 (2) The city did not levy a separate ad valorem property tax rate
4 to support the retirement system in the 1983–84 fiscal year.

5 (3) The retirement system provides for a cost-of-living
6 adjustment that is indexed to a consumer price index and does not
7 limit the annual increases which may be paid to members after
8 their retirement.

9 (4) The retirement system is not currently available to newly
10 hired fire and police employees and will not be available in the
11 future.

12 (5) Before January 1, 1985, the city unsuccessfully litigated a
13 limit to the cost-of-living adjustment that may be paid to members
14 of the retirement system after their retirement.

15 (6) After July 1, 1985, the city conducted an election and a
16 question authorizing the levying of an ad valorem property tax for
17 the purpose of making payments in support of the retirement system
18 received the affirmative votes of at least 60 percent of those voting
19 on that question.

20 The proceeds of an ad valorem property tax rate levied pursuant
21 to this subdivision shall be used only to pay for the obligations of
22 a retirement system described by this subdivision. The proceeds
23 shall not be used to finance more than 75 percent of the annual
24 obligations of this retirement system. A city shall not levy an ad
25 valorem property tax pursuant to this subdivision after June 30,
26 2034.

27 (d) ~~(1)~~ *Except as otherwise provided in paragraph (2), if a*
28 *jurisdiction imposes a rate in excess of the maximum rate*
29 *authorized by subdivision (a), (b), or (c), the amount of property*
30 *tax allocated to the jurisdiction pursuant to this chapter shall be*
31 *reduced by one dollar (\$1) for each one dollar (\$1) of property tax*
32 *revenue attributable to the excess rate. Any property tax revenue*
33 *that has been subtracted from a jurisdiction's allocation pursuant*
34 *to this subdivision shall be allocated to elementary, high school,*
35 *and unified school districts within the jurisdiction's jurisdiction*
36 *in proportion to the average daily attendance of each district.*

37 (2) *With respect to the ad valorem property taxes collected*
38 *pursuant to paragraph (4) of subdivision (a) in excess of the*
39 *maximum rate authorized by subdivision (b) in the 2007–08,*

1 2008–09, and 2009–10 fiscal years for the City of Bell, all of the
 2 following shall apply:

3 (A) (i) On or before December 31, 2010, the City of Bell shall
 4 pay to the County of Los Angeles an amount equal to the amount
 5 of ad valorem property tax collected pursuant to paragraph (4) of
 6 subdivision (a) in excess of the maximum rate authorized by
 7 subdivision (b) in the 2007–08, 2008–09, and 2009–10 fiscal years,
 8 including interest thereon calculated at the average rate earned
 9 by the City of Bell on its idle funds in the 2007–08, 2008–09, and
 10 2009–10 fiscal years.

11 (ii) From the amounts paid to the County of Los Angeles as
 12 required by clause (i), the County of Los Angeles shall make a
 13 refund to any taxpayer who paid the ad valorem property tax
 14 collected as specified in clause (i), in a manner generally consistent
 15 with the County of Los Angeles tax refund practices.

16 (B) (i) If, by December 31, 2011, the County of Los Angeles is
 17 unable to locate a taxpayer who paid the ad valorem property tax
 18 collected as specified in clause (i) of subparagraph (A) in order
 19 to make a refund to the taxpayer, those amounts remaining from
 20 those amounts paid to the County of Los Angeles pursuant to
 21 subparagraph (A) shall be allocated to elementary, high school,
 22 and unified school districts as provided by paragraph (1).

23 (ii) The requirement of paragraph (1) shall apply only with
 24 respect to any amounts remaining after making refunds to
 25 taxpayers as provided by clause (i).

26 (C) The City of Bell shall reimburse the county auditor for the
 27 actual and reasonable costs incurred by the county auditor to
 28 administer this subdivision.

29 (e) This section shall be deemed to be a limit on the maximum
 30 property tax rate pursuant to Section 20 of Article XIII of the
 31 California Constitution.

32 *SEC. 2. The Legislature finds and declares that a special law*
 33 *is necessary and that a general law cannot be made applicable*
 34 *within the meaning of Section 16 of Article IV of the California*
 35 *Constitution because of the unique circumstances encountered by*
 36 *the City of Bell with respect to the collection of property taxes.*

37 *SEC. 3. No reimbursement is required by this act pursuant to*
 38 *Section 6 of Article XIII B of the California Constitution because*
 39 *this act provides for reimbursement to a local agency in the form*
 40 *of additional revenues that are sufficient in amount to fund the*

1 *new duties established by this act, within the meaning of Section*
2 *17556 of the Government Code.*

3 *SEC. 4. This act is an urgency statute necessary for the*
4 *immediate preservation of the public peace, health, or safety within*
5 *the meaning of Article IV of the Constitution and shall go into*
6 *immediate effect. The facts constituting the necessity are:*

7 *In order to ensure that taxpayers in the City of Bell who overpaid*
8 *on their property taxes are reimbursed, it is necessary for this act*
9 *to take effect immediately.*

10 ~~SECTION 1. The Legislature finds and declares all of the~~
11 ~~following:~~

12 ~~(a) The San Francisco Bay-Sacramento-San Joaquin River Delta~~
13 ~~(Delta) is in the midst of an ecological crisis. Its unique character~~
14 ~~and capacity to serve California are threatened by a variety of~~
15 ~~factors, including diversions of water, pollution, urbanization,~~
16 ~~flood and seismic risks, and invasive species.~~

17 ~~(b) The water that is found in, and delivered through, the Delta~~
18 ~~is the source of drinking water for 25,000,000 Californians, fuels~~
19 ~~a \$37,000,000,000 agricultural industry, and serves as an important~~
20 ~~habitat for over 750 plant and animal species.~~

21 ~~(c) It has been estimated that there are approximately 1,800~~
22 ~~agricultural, municipal, and industrial diversions in the Delta that,~~
23 ~~combined, divert 5 percent of the freshwater flows from the Delta~~
24 ~~watershed. However, because none of these in-Delta diverters are~~
25 ~~required to measure and report their water diversion and use, there~~
26 ~~is presently little data regarding the nature, extent, and location of~~
27 ~~these diversions.~~

28 ~~(d) Given the well-known importance of water to the state's~~
29 ~~health, economy, and welfare, including to its ecosystems and~~
30 ~~natural resources, water measurement and reporting are required~~
31 ~~for most diversions.~~

32 ~~(e) The Delta Vision Committee Implementation Report~~
33 ~~recommends improved monitoring and reporting, including the~~
34 ~~elimination of exemptions from requirements for the filing of~~
35 ~~statements of water diversion and use.~~

36 ~~SEC. 2. Chapter 2.7 (commencing with Section 348) is added~~
37 ~~to Division 1 of the Water Code, to read:~~

~~CHAPTER 2.7. WATER DIVERSION AND USE REPORTS~~

1
2
3 348. ~~(a) The department or the board may adopt emergency~~
4 ~~regulations providing for the electronic filing of reports of water~~
5 ~~diversion or use required to be filed with the department or board~~
6 ~~under this code, including, but not limited to, any report required~~
7 ~~to be filed under Part 5.1 (commencing with Section 5100) of~~
8 ~~Division 2 and any report required to be filed by a water right~~
9 ~~permittee or licensee.~~

10 ~~(b) Emergency regulations adopted pursuant to this section, or~~
11 ~~any amendments thereto, shall be adopted by the department or~~
12 ~~the board in accordance with Chapter 3.5 (commencing with~~
13 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~
14 ~~Code. The adoption of these regulations is an emergency and shall~~
15 ~~be considered by the Office of Administrative Law as necessary~~
16 ~~for the immediate preservation of the public peace, health, safety,~~
17 ~~and general welfare. Notwithstanding Chapter 3.5 (commencing~~
18 ~~with Section 11340) of Part 1 of Division 3 of Title 2 of the~~
19 ~~Government Code, any emergency regulations or amendments to~~
20 ~~those regulations adopted under this section shall remain in effect~~
21 ~~until revised by the department or the board that adopted the~~
22 ~~regulations or amendments.~~

23 ~~SEC. 3. Section 5100 of the Water Code is amended to read:~~

24 ~~5100. As used in this part:~~

25 ~~(a) "Best available technologies" means technologies at the~~
26 ~~highest technically practical level, using flow totaling devices, and~~
27 ~~if necessary, data loggers and telemetry.~~

28 ~~(b) "Best professional practices" means practices attaining and~~
29 ~~maintaining the accuracy of measurement and reporting devices~~
30 ~~and methods.~~

31 ~~(c) "Diversion" means taking water by gravity or pumping from~~
32 ~~a surface stream or subterranean stream flowing through a known~~
33 ~~and definite channel, or other body of surface water, into a canal,~~
34 ~~pipeline, or other conduit, and includes impoundment of water in~~
35 ~~a reservoir.~~

36 ~~(d) "Person" means all persons whether natural or artificial,~~
37 ~~including the United States of America, State of California, and~~
38 ~~all political subdivisions, districts, municipalities, and public~~
39 ~~agencies.~~

40 ~~SEC. 4. Section 5101 of the Water Code is amended to read:~~

1 5101. Each person who, after December 31, 1965, diverts water
2 shall file with the board, prior to July 1 of the succeeding year, a
3 statement of his or her diversion and use, except that a statement
4 is not required to be filed if the diversion is any of the following:

5 (a) From a spring that does not flow off the property on which
6 it is located and from which the person's aggregate diversions do
7 not exceed 25 acre-feet in any year.

8 (b) Covered by a registration for small domestic or livestock
9 stockpond uses, or permit or license to appropriate water on file
10 with the board.

11 (c) Included in a notice filed pursuant to Part 5 (commencing
12 with Section 4999).

13 (d) Regulated by a watermaster appointed by the department
14 and included in annual reports filed with a court or the board by
15 the watermaster, which reports identify the persons who have
16 diverted water and describe the general purposes and the place,
17 the use, and the quantity of water that has been diverted from each
18 source.

19 (e) Included in annual reports filed with a court or the board by
20 a watermaster appointed by a court or pursuant to statute to
21 administer a final judgment determining rights to water, which
22 reports identify the persons who have diverted water and give the
23 general place of use and the quantity of water that has been diverted
24 from each source.

25 (f) For use in compliance with Article 2.5 (commencing with
26 Section 1226) or Article 2.7 (commencing with Section 1228) of
27 Chapter 1 of Part 2.

28 (g) A diversion that occurs before January 1, 2009, if any of the
29 following applies:

30 (1) The diversion is from a spring that does not flow off the
31 property on which it is located, and the person's aggregate
32 diversions exceed 25 acre-feet in any year.

33 (2) The diversion is covered by an application to appropriate
34 water on file with the board.

35 (3) The diversion is reported by the department in its hydrologic
36 data bulletins.

37 (4) The diversion is included in the consumptive use data for
38 the Delta lowlands published by the department in its hydrologic
39 data bulletins.

40 SEC. 5. Section 5103 of the Water Code is amended to read:

1 ~~5103. Each statement shall be prepared on a form provided by~~
2 ~~the board. The statement shall include all of the following~~
3 ~~information:~~

4 ~~(a) The name and address of the person who diverted water and~~
5 ~~of the person filing the statement.~~

6 ~~(b) The name of the stream or other source from which water~~
7 ~~was diverted, and the name of the next major stream or other body~~
8 ~~of water to which the source is tributary.~~

9 ~~(c) The place of diversion. The location of the diversion works~~
10 ~~shall be depicted on a specific United States Geological Survey~~
11 ~~topographic map, or shall be identified using the California~~
12 ~~Coordinate System, or latitude and longitude measurements. If~~
13 ~~assigned, the public land description to the nearest 40-acre~~
14 ~~subdivision and the assessor's parcel number shall also be provided.~~

15 ~~(d) The capacity of the diversion works and of the storage~~
16 ~~reservoir, if any, and the months in which water was used during~~
17 ~~the preceding calendar year.~~

18 ~~(e) (1) On and after January 1, 2012, monthly records of water~~
19 ~~diversions. The measurements of the diversion shall be made using~~
20 ~~best available technologies and best professional practices. Nothing~~
21 ~~in this paragraph shall be construed to require the implementation~~
22 ~~of technologies or practices by a person who provides to the board~~
23 ~~documentation demonstrating that the implementation of those~~
24 ~~practices is not locally cost effective.~~

25 ~~(2) (A) The terms of, and eligibility for, any grant or loan~~
26 ~~awarded or administered by the department, the board, or the~~
27 ~~California Bay-Delta Authority on behalf of a person that is subject~~
28 ~~to paragraph (1) shall be conditioned on compliance with that~~
29 ~~paragraph.~~

30 ~~(B) Notwithstanding subparagraph (A), the board may determine~~
31 ~~that a person is eligible for a grant or loan even though the person~~
32 ~~is not complying with paragraph (1), if both of the following apply:~~

33 ~~(i) The board determines that the grant or loan will assist the~~
34 ~~grantee or loan recipient in complying with paragraph (1).~~

35 ~~(ii) The person has submitted to the board a one-year schedule~~
36 ~~for complying with paragraph (1).~~

37 ~~(C) It is the intent of the Legislature that the requirements of~~
38 ~~this subdivision shall complement and not affect the scope of~~
39 ~~authority granted to the board by provisions of law other than this~~
40 ~~article.~~

1 ~~(f) The purpose of use.~~

2 ~~(g) A general description of the area in which the water was~~
3 ~~used. The location of the place of use shall be depicted on a specific~~
4 ~~United States Geological Survey topographic map and on any other~~
5 ~~maps with identifiable landmarks. If assigned, the public land~~
6 ~~description to the nearest 40-acre subdivision and the assessor's~~
7 ~~parcel number shall also be provided.~~

8 ~~(h) The year in which the diversion was commenced as near as~~
9 ~~is known.~~

10 SEC. 6. ~~Section 5107 of the Water Code is amended to read:~~

11 ~~5107. (a) The making of any willful misstatement pursuant to~~
12 ~~this part is a misdemeanor punishable by a fine not exceeding one~~
13 ~~thousand dollars (\$1,000) or by imprisonment in the county jail~~
14 ~~for not to exceed six months, or both.~~

15 ~~(b) Any person who fails to file a statement required to be filed~~
16 ~~under this part for a diversion or use that occurs after January 1,~~
17 ~~2009, who tampers with any measuring device, or who makes a~~
18 ~~material misstatement pursuant to this part may be liable civilly~~
19 ~~as provided in subdivisions (c) and (d).~~

20 ~~(c) Civil liability may be administratively imposed by the board~~
21 ~~pursuant to Section 1055 in an amount not to exceed the following~~
22 ~~amounts:~~

23 ~~(1) For failure to file a statement, one thousand dollars (\$1,000),~~
24 ~~plus five hundred dollars (\$500) per day for each additional day~~
25 ~~on which the violation continues if the person fails to file a~~
26 ~~statement within 30 days after the board has called the violation~~
27 ~~to the attention of that person.~~

28 ~~(2) For a violation resulting from a physical malfunction of a~~
29 ~~measuring device not caused by the person or any other~~
30 ~~unintentional misstatement, two hundred fifty dollars (\$250), plus~~
31 ~~two hundred fifty dollars (\$250) per day for each additional day~~
32 ~~on which the measuring device continues to malfunction or the~~
33 ~~misstatement is not corrected if the person fails to correct or repair~~
34 ~~the measuring device or correct the misstatement within 60 days~~
35 ~~after the board has called the malfunction or violation to the~~
36 ~~attention of that person.~~

37 ~~(3) For knowingly tampering with any measuring device or~~
38 ~~knowingly making a material misstatement in a statement filed~~
39 ~~under this part, twenty-five thousand dollars (\$25,000), plus one~~
40 ~~thousand dollars (\$1,000) for each day on which the violation~~

1 continues if the person fails to correct the violation within 30 days
2 after the board has called the violation to the attention of that
3 person:

4 (4) For any other violation, five hundred dollars (\$500), plus
5 two hundred fifty dollars (\$250) for each additional day on which
6 the violation continues if the person fails to correct the violation
7 within 30 days after the board has called the violation to the
8 attention of that person:

9 (d) When an additional penalty may be imposed under
10 subdivision (c) for failure to correct a violation or correct or repair
11 a malfunctioning measuring device within a specified period after
12 the violation has been called to a person's attention by the board,
13 the board, for good cause, may provide for a longer period for
14 correction of the problem, and the additional penalty shall not
15 apply if the violation is corrected within the period specified by
16 the board:

17 (e) In determining the appropriate amount, the board shall
18 consider all relevant circumstances, including, but not limited to,
19 all of the following factors:

20 (1) The extent of harm caused by the violation:

21 (2) The nature and persistence of the violation:

22 (3) The length of time over which the violation occurs:

23 (4) Any corrective action undertaken by the violator:

24 (f) All funds recovered pursuant to this section shall be deposited
25 in the Water Rights Fund established pursuant to Section 1550.

26 (g) Remedies under this section are in addition to, and do not
27 supersede or limit, any other remedies, civil or criminal:

28 SEC. 7. Section 5108 of the Water Code is repealed: