

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1520

**Introduced by Assembly Member Evans
(Coauthor: Assembly Member Chesbro)**

February 27, 2009

An act to add Chapter 6.6 (commencing with Section 5809.1) to Division 5 of the Public Resources Code, relating to watersheds.

LEGISLATIVE COUNSEL'S DIGEST

AB 1520, as amended, Evans. Statewide Watershed Program.

The California Watershed Protection and Restoration Act requires state agencies to adopt guidelines for use by local watershed partnerships to provide specified mechanisms and authorizes state agencies with jurisdiction over watershed planning and protection to provide technical assistance to watershed management partnerships, to the extent that funds are available.

This bill would establish the Statewide Watershed Program as a voluntary and nonregulatory program to provide assistance and funds to local community-based efforts in the conservation, protection, and restoration of the state's watersheds and to promote coordinated management of watersheds under the authority of the Secretary of the Natural Resources Agency and the Department of Conservation (*department*).

The bill would create within the department a State Watershed Advisory Committee consisting of at least 10 members appointed by the secretary, with at least one member from each of the state's

hydrologic regions, as specified. *The bill would require that no less than 50% of the committee membership be comprised of representatives from community-based nonprofit organizations, local governments, and resource conservation districts.* The bill would authorize members to receive reimbursement for travel expenses in accordance with specified rules ~~and would prohibit the disclosure of proprietary information, except as specified.~~

This bill would require the department to post research findings, reports, and other materials, as appropriate, produced or funded by the program in a conspicuous location on the department’s Internet Web site.

The bill would also authorize the secretary to cooperate with the federal government, other states, and other state and local agencies in furtherance of the purposes of the program and would authorize the program to receive contributions or funds from specified private or public entities or persons. The bill would authorize ~~the secretary to contract with any authoritative scientific body~~ *the department to contract with qualified scientists or institutions with expertise relating to the conservation, restoration, protection, and management of the state’s watersheds, as specified, and would exempt the adoption of guidelines, qualifications, or conditions from the Administrative Procedure Act.*

The bill would require that the provisions of the Statewide Watershed Program only be implemented in a fiscal year for which funding is provided in the annual Budget Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. Chapter 6.6 (commencing with Section 5809.1)
- 2 is added to Division 5 of the Public Resources Code, to read:
- 3
- 4 CHAPTER 6.6. STATEWIDE WATERSHED PROGRAM
- 5
- 6 5809.1. The Legislature finds and declares all of the following:
- 7 (a) Clean water and healthy watersheds are necessary to support
- 8 human communities as well as the state’s native fish, wildlife, and
- 9 plant communities, and are part of the legacy of California. Each
- 10 generation has an obligation to be good stewards of those resources
- 11 to ensure their preservation for future generations.

1 (b) Watershed management is a proven and valuable approach
2 to meeting comprehensive natural resource management objectives.
3 Watersheds provide a useful natural unit for managing chemical,
4 physical, biological and socioeconomic processes in an integrated
5 and productive fashion.

6 (c) This chapter is not intended to establish a precedent, to
7 supersede or reduce, or in any way alter any federal or state law
8 or regulation, including, but not limited to, laws regarding water
9 quality, water rights, land use, forestry practices or otherwise
10 establish regulation of watersheds, water, land, or land use.

11 (d) The state should assume leadership in formulating and
12 putting into effect a statewide program that will advance
13 sustainable watershed-based management of California's natural
14 resources using community-based strategies to conserve, protect,
15 restore, and manage watersheds and related natural resources.

16 (e) The expenditure of state, county, city, city and county,
17 district, special district, or other public funds that are available or
18 may become available for planning, designing, or implementing
19 the program and for the construction or maintenance of control or
20 preservation or restoration projects in furtherance of this program
21 on privately or publicly owned land constitutes an expenditure for
22 the general public benefit.

23 (f) This chapter is enacted to accomplish all of the following:

24 (1) Establish the Statewide Watershed Program as a voluntary
25 and nonregulatory program to provide assistance and funds to local
26 community-based efforts in the conservation, protection, and
27 restoration of the state's watersheds and promote coordinated
28 management of watersheds under the authority of the Secretary of
29 the Natural Resources Agency and the Department of Conservation.
30 The leadership and assistance to be provided pursuant to this
31 chapter shall include all of the following:

32 (A) Coordination and communication.

33 (B) Information and data management.

34 (C) Training and technical assistance.

35 (D) Education.

36 (E) Scientific assistance.

37 (F) Financial assistance.

38 ~~(3)~~

39 (2) Increase collaboration among the Natural Resources Agency,
40 including the Department of Conservation, the Department of

1 Water Resources, the Department of Fish and Game, the
2 Department of Forestry and Fire Protection, the California
3 Environmental Protection Agency, the Department of Food and
4 Agriculture, the State Water Resources Control Board, and the
5 Ocean Protection Council to implement this chapter.

6 ~~(4)~~

7 (3) Encourage participation by local governments and
8 community organizations.

9 *(g) It is the intent of the Legislature that the Statewide
10 Watershed Program be carried out in partnership with, among
11 other entities, locally based watershed organizations in a manner
12 that is transparent and inclusive, supports scientifically and
13 technically sound watershed management plans, and recognizes
14 that the state's interest is served, to the extent feasible, by ensuring
15 that any standards governing the content of local watershed plans,
16 assessments, or practices reflect diverse regional differences.*

17 5809.2. As used in this chapter, unless otherwise specified, the
18 following terms have the following meanings:

19 ~~(a) "Committee" means the State Watershed Advisory
20 Committee.~~

21 ~~(b) "Department" means the Department of Conservation.~~

22 ~~(c) "Person" means a natural person, association, corporation,
23 city, county, city and county, special district, or joint powers
24 authority, the state, a political subdivision of the state, or the federal
25 government.~~

26 ~~(d) "Secretary" means the Secretary of the Natural Resources
27 Agency.~~

28 ~~(e) "Director" means the Director of Conservation.~~

29 ~~(f) "Watershed" means all lands enclosed by a continuous
30 hydrologic drainage divide and lying upslope from a specified
31 point on a stream, river, lake, or other body of water.~~

32 ~~(g) "Agency" means the Natural Resources Agency.~~

33 ~~(h) "Program" means the Statewide Watershed Program
34 established in the Department of Conservation.~~

35 ~~(i) "Stakeholder" means a person who has a direct interest in a
36 watershed as a result of jurisdiction, residence, land ownership,
37 water rights, or other effect from his or her use of the water or land
38 in the watershed.~~

39 ~~(j) "Community" means the persons who are stakeholders within
40 the local watershed.~~

- 1 (a) “Agency” means the Natural Resources Agency.
2 (b) “Committee” means the State Watershed Advisory
3 Committee.
4 (c) “Community” means the persons who are stakeholders
5 within the local watershed.
6 (d) “Department” means the Department of Conservation.
7 (e) “Director” means the Director of Conservation.
8 (f) “Disadvantaged community” means a community with an
9 annual median household income that is less than 80 percent of
10 the statewide annual median household income.
11 (g) “Person” means a natural person, association, corporation,
12 city, county, city and county, special district, or joint powers
13 authority, the state, a political subdivision of the state, or the
14 federal government.
15 (h) “Program” means the Statewide Watershed Program
16 established in the Department of Conservation.
17 (i) “Secretary” means the Secretary of the Natural Resources
18 Agency.
19 (j) “Stakeholder” means a person who has a direct interest in
20 a watershed as a result of jurisdiction, residence, land ownership,
21 water rights, or other effect from his or her use of the water or
22 land in the watershed.
23 (k) “Watershed” means all lands enclosed by a continuous
24 hydrologic drainage divide and lying upslope from a specified
25 point on a stream, river, lake, or other body of water.
26 5809.3. (a) The secretary shall create within the department
27 the State Watershed Advisory Committee, which shall consist of
28 at least 10, but not more than 25 members, with membership from
29 each of the state’s ten hydrologic regions as determined by the
30 Department of Water Resources. Members of the committee shall
31 be appointed by and serve at the pleasure of the secretary.
32 (b) The members of the committee shall be familiar with and
33 understand the community-based watershed efforts occurring in
34 their region and may include representatives of county, city, city
35 and county, special district, and stakeholder interests.
36 (c) Members of the committee shall serve a term of two years,
37 and may be reappointed for additional two-year terms by the
38 secretary at his or her discretion.
39 (d) Persons appointed to the committee are intended to represent
40 and further the interests of the state, their community, and

1 watershed, and their representation and furtherance of the program
 2 are intended to serve the public interest. Therefore, the Legislature
 3 finds that, with respect to persons who are appointed to the
 4 committee, the state, community, and watershed are tantamount
 5 to, and constitute, the public generally within the meaning of
 6 Section 87103 of the Government Code.

7 *(e) No less than 50 percent of the committee membership shall*
 8 *be comprised of representatives from community-based nonprofit*
 9 *organizations, local governments, and resource conservation*
 10 *districts.*

11 5809.4. (a) The committee shall be advisory only, to assist the
 12 secretary and the director.

13 (b) In carrying out its responsibilities, the committee may do
 14 all of the following:

15 (1) Submit recommendations to the secretary or director
 16 regarding, but not limited to, all of the following:

17 (A) ~~Conservation~~ *Development of best management practices*
 18 *for the conservation*, restoration, protection, and management of
 19 the state’s watersheds.

20 (B) Identification and prioritization of problems, opportunities,
 21 and recommendations for solutions to problems associated with
 22 the state’s natural resources.

23 (C) Criteria for measuring progress made toward the
 24 conservation, restoration, protection, and management of the state’s
 25 watersheds.

26 (D) Administration of the program.

27 (E) Operation of the committee, including, but not limited to,
 28 all of the following:

29 (i) Selection of committee members.

30 (ii) The program’s annual budget.

31 (F) Expenditures made to implement the program.

32 (2) Adopt, amend, and rescind all proper and necessary bylaws
 33 and procedures for the committee’s operation.

34 (c) Upon authorization and preapproval from the agency or
 35 department, members of the committee may receive reimbursement
 36 for travel expenses in accordance with the rules of the Department
 37 of Personnel Administration for attendance at meetings and other
 38 approved committee activities.

39 5809.5. An action in law or equity shall not be brought against
 40 a member or agent of the committee, and a member or agent of

1 the committee shall not be personally liable for the actions of the
2 committee or the department or agency. A member or agent of the
3 committee is not responsible individually to another person for
4 errors in judgment, mistakes, or other acts of commission or
5 omission, as a principal, agent, or employee, except for his or her
6 own individual acts, including dishonesty, fraud, or crime. A
7 member or agent of the committee is not responsible individually
8 for an act or omission of another member or agent of the
9 committee, or the department or agency. Liability is several and
10 not joint, and a member or agent of the committee is not liable for
11 the default of another member or agent of the committee, or the
12 department or agency.

13 ~~5809.6. Except as provided in Section 5809.7, data and related~~
14 ~~information and materials produced during the course of research~~
15 ~~conducted pursuant to this chapter that are in the possession of the~~
16 ~~department, the committee, or any other body engaged in research~~
17 ~~funded pursuant to this chapter, shall be property of the state, and~~
18 ~~may be released at the discretion of the secretary or the director~~
19 ~~under delegation from the secretary in furtherance of the purposes~~
20 ~~of this chapter.~~

21 ~~5809.7. (a) All proprietary information obtained by the~~
22 ~~committee, the department, or the agency in furtherance of this~~
23 ~~chapter, including, related to private land, but not limited to,~~
24 ~~information not made public pursuant to other state or federal laws,~~
25 ~~that comes into possession of the committee, the department, or~~
26 ~~the agency, is confidential and shall not be disclosed, except when~~
27 ~~required by a court order issued upon a showing of good cause~~
28 ~~and that the information is necessary to a judicial proceeding~~
29 ~~involving this article.~~

30 ~~(b) Disclosure, as permitted under this section, shall be~~
31 ~~conducted in camera by the court.~~

32 ~~(c) The court shall, in its discretion, issue orders restraining a~~
33 ~~party or parties to a judicial proceeding involving this chapter from~~
34 ~~disseminating any proprietary information to the public or another~~
35 ~~person not a party to the judicial proceeding.~~

36 *5809.6. The department shall post research findings, reports,*
37 *and other materials, as appropriate, produced or funded by this*
38 *program in a conspicuous location on the department's Internet*
39 *Web site. The department shall exercise its discretion in posting*
40 *information that may reveal personal identifying information or*

1 *information otherwise exempt from disclosure pursuant to Chapter*
2 *3.5 (commencing with Section 6250) of Division 7 of Title 1 of the*
3 *Government Code.*

4 ~~5809.8.~~

5 5809.7. (a) There is hereby created within the Department of
6 Conservation the Statewide Watershed Program.

7 (b) The program shall be conducted under the control of the
8 secretary and administered by the department.

9 (c) The department shall provide staffing and logistical support
10 that in the director’s discretion is necessary for administering the
11 program.

12 ~~(d) The department may contract with a public or private entity~~
13 ~~to carry out activities in furtherance of this chapter.~~

14 ~~5809.9.~~

15 5809.8. The director shall implement, administer, and take
16 those actions as he or she deems necessary, in his or her discretion,
17 to fulfill the purposes of this chapter and carry out the
18 responsibilities of the program.

19 ~~5809.10. The director shall establish clear priorities for the~~
20 ~~5809.9. The director shall consider recommendations from the~~
21 ~~committee when establishing clear priorities for the program and~~
22 ensure that those priorities are met in a timely manner.

23 ~~5809.11.~~

24 5809.10. (a) The program shall provide assistance and funds
25 to local community-based efforts in the conservation, protection,
26 and restoration of the state’s watersheds and promote coordinated
27 management of watersheds. The leadership and assistance provided
28 pursuant to this chapter shall include all of the following:

- 29 (1) Coordination and communication.
- 30 (2) Information and data management.
- 31 (3) Training and technical assistance.
- 32 (4) Education.
- 33 (5) Scientific assistance.
- 34 (6) Financial assistance.

35 ~~(b) Funds made available to implement the program pursuant~~
36 ~~to this chapter may be expended for all of the following:~~

- 37 ~~(1) Reasonable administrative expenses of the agency,~~
38 ~~department, and committee in carrying out the responsibilities,~~
39 ~~purposes, and policies of this chapter.~~

1 (b) Funds expended to implement the program may be made
2 available for the following:

3 (1) (A) Reasonable and necessary administrative expenses of
4 the agency, department, and committee in implementing this
5 chapter.

6 (B) To the extent that state bond funds are used, those expenses
7 shall conform to the terms and conditions prescribed by the funding
8 source, including, but not limited to, Section 75070.5 of this code
9 and Section 79590 of the Water Code.

10 (2) Coordination and communication for the provision of
11 assistance in making programs, permits, educational materials,
12 methods, reporting, and any other relevant information available
13 for the conservation, restoration, and management of watersheds.

14 (3) Information and data management and collection of
15 information regarding watershed conservation, protection,
16 restoration, and management, including, but not limited to, water
17 quality, water supply and demand, vegetation management, land
18 use activities, socioeconomic conditions, and other information as
19 may be useful in understanding, designing, permitting,
20 implementing, or otherwise furthering the purposes of this chapter.

21 (4) Training and technical assistance to persons who are engaged
22 in, or seek to be engaged in, or contribute to, watershed
23 conservation, protection, restoration, and management.

24 (5) Education of the general public, including, but not limited
25 to, schools, organizations, groups, and others regarding the
26 importance to the state of watershed conservation, protection,
27 restoration, and management.

28 (6) Science and research regarding the operation, conservation,
29 restoration, and management of watersheds, including
30 recommendations for scientific studies that may be useful to, or
31 further efforts by, local planners and practitioners, and communities
32 involved in local watershed conservation, protection, restoration,
33 and management.

34 (7) Financial assistance, including, but not limited to, the
35 awarding of grants to community-based programs for coordination,
36 watershed assessment and planning, implementation of
37 management plans, and monitoring of watershed conditions and
38 the effect of management practices on those conditions.

39 (c) The department shall develop criteria for the review and
40 approval of grant applications and shall establish and require a

1 *cost-sharing requirement for all grants. The department may waive*
2 *or reduce the cost-sharing requirements for projects that directly*
3 *benefit or occur in a disadvantaged community. The cost-sharing*
4 *requirement may be provided in the form of cash or in-kind services*
5 *or materials, or any combination of those, as determined by the*
6 *department.*

7 ~~5809.12.~~

8 5809.11. The secretary may cooperate with the federal
9 government, other states, other agencies of this state, local
10 government, public entities, or any person in furtherance of the
11 purposes of this chapter, and to that end the program may receive,
12 expend, and use contributions, grants, or any other private or public
13 funds or property provided from those entities or persons.

14 ~~5809.13. Notwithstanding any other provision of law, the~~
15 ~~secretary, upon the secretary's own initiative or upon the~~
16 ~~recommendation of the committee, may contract with any~~
17 ~~authoritative scientific body with expertise relating to the~~
18 ~~conservation, restoration, protection, and management of the state's~~
19 ~~watersheds, for research or other activities in furtherance of the~~
20 ~~purposes of this chapter.~~

21 5809.12. *The department may contract with qualified scientists*
22 *or institutions with expertise relating to the conservation,*
23 *restoration, protection, and management of the state's watersheds*
24 *for research or education activities in furtherance of the purposes*
25 *of this chapter.*

26 ~~5809.14.~~

27 5809.13. The adoption of guidelines, qualifications, or
28 conditions applicable to the award of program grants shall be
29 exempt from Chapter 3.5 (commencing with Section 11340) of
30 Part 1 of Division 3 of the Government Code.

31 ~~5809.15.~~

32 5809.14. On or before January 1, 2012, and on or before
33 January 1 every two years thereafter the Department of
34 Conservation, in consultation with the Department of Fish and
35 Game, the Department of Water Resources, and any other relevant
36 state agencies, shall submit a report to the ~~secretary~~ *Legislature*
37 on the progress in implementing this chapter.

1 ~~5809.16.~~

2 5809.15. This chapter shall be implemented only in a fiscal
3 year for which funding is provided for that purpose in the annual
4 Budget Act.

5 SEC. 2. The provisions of this chapter are severable. If any
6 provision of this chapter or its application is held invalid, that
7 invalidity shall not affect other provisions or applications that can
8 be given effect without the invalid provision or application.

O