

AMENDED IN SENATE APRIL 12, 2010

AMENDED IN SENATE MARCH 17, 2010

**SENATE BILL**

**No. 918**

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**Introduced by Senator Pavley**

February 1, 2010

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An act to amend Sections 13350 and 13521 of, and to add Chapter 7.3 (commencing with Section 13560) to Division 7 of, the Water Code, relating to water recycling.

LEGISLATIVE COUNSEL'S DIGEST

SB 918, as amended, Pavley. Water recycling.

Existing law establishes the State Water Resources Control Board and the California regional water quality control boards as the principal state agencies with authority over matters relating to water quality. Existing law requires the State Department of Public Health to establish uniform statewide recycling criteria for each varying type of use for recycled water where the use involves the protection of public health.

This bill would require the State Department of Public Health to ~~develop and~~ adopt uniform water recycling criteria for indirect potable water reuse *for groundwater recharge, as defined, by December 31, 2013*, and ~~investigate the feasibility of developing~~ *develop and adopt* uniform water recycling criteria for ~~direct indirect~~ potable reuse; ~~consistent with a specified timeline through reservoir augmentation, as defined, by December 31, 2016. The bill would require the department to investigate the feasibility of developing uniform water recycling criteria for direct potable reuse and to provide a final report on that investigation to the Legislature by December 31, 2016.~~ The bill, from July 1, 2011, to June 30, ~~2015, 2017~~, inclusive, would require funds generated by the imposition of specified liabilities for violations of

water quality requirements to be made available, upon appropriation by the Legislature, to the ~~State Department of Public Health~~ *department* for the purposes of developing and adopting the water recycling criteria, *in accordance with a specified schedule.*

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. Section 13350 of the Water Code is amended to  
 2 read:

3 13350. (a) A person who (1) violates a cease and desist order  
 4 or cleanup and abatement order hereafter issued, reissued, or  
 5 amended by a regional board or the state board, or (2) in violation  
 6 of a waste discharge requirement, waiver condition, certification,  
 7 or other order or prohibition issued, reissued, or amended by a  
 8 regional board or the state board, discharges waste, or causes or  
 9 permits waste to be deposited where it is discharged, into the waters  
 10 of the state, or (3) causes or permits any oil or any residuary  
 11 product of petroleum to be deposited in or on any of the waters of  
 12 the state, except in accordance with waste discharge requirements  
 13 or other actions or provisions of this division, shall be liable civilly,  
 14 and remedies may be proposed, in accordance with subdivision  
 15 (d) or (e).

16 (b) (1) A person who, without regard to intent or negligence,  
 17 causes or permits a hazardous substance to be discharged in or on  
 18 any of the waters of the state, except in accordance with waste  
 19 discharge requirements or other provisions of this division, shall  
 20 be strictly liable civilly in accordance with subdivision (d) or (e).

21 (2) For purposes of this subdivision, the term “discharge”  
 22 includes only those discharges for which Section 13260 directs  
 23 that a report of waste discharge shall be filed with the regional  
 24 board.

25 (3) For purposes of this subdivision, the term “discharge” does  
 26 not include an emission excluded from the applicability of Section  
 27 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to  
 28 Environmental Protection Agency regulations interpreting Section  
 29 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

1 (c) A person shall not be liable under subdivision (b) if the  
2 discharge is caused solely by any one or combination of the  
3 following:

4 (1) An act of war.

5 (2) An unanticipated grave natural disaster or other natural  
6 phenomenon of an exceptional, inevitable, and irresistible  
7 character, the effects of which could not have been prevented or  
8 avoided by the exercise of due care or foresight.

9 (3) Negligence on the part of the state, the United States, or any  
10 department or agency ~~thereof; provided, that thereof.~~ *However,*  
11 this paragraph shall not be interpreted to provide the state, the  
12 United States, or any department or agency thereof a defense to  
13 liability for any discharge caused by its own negligence.

14 (4) An intentional act of a third party, the effects of which could  
15 not have been prevented or avoided by the exercise of due care or  
16 foresight.

17 (5) Any other circumstance or event that causes the discharge  
18 despite the exercise of every reasonable precaution to prevent or  
19 mitigate the discharge.

20 (d) The court may impose civil liability either on a daily basis  
21 or on a per gallon basis, but not on both.

22 (1) The civil liability on a daily basis shall not exceed fifteen  
23 thousand dollars (\$15,000) for each day the violation occurs.

24 (2) The civil liability on a per gallon basis shall not exceed  
25 twenty dollars (\$20) for each gallon of waste discharged.

26 (e) The state board or a regional board may impose civil liability  
27 administratively pursuant to Article 2.5 (commencing with Section  
28 13323) of Chapter 5 either on a daily basis or on a per gallon basis,  
29 but not on both.

30 (1) The civil liability on a daily basis shall not exceed five  
31 thousand dollars (\$5,000) for each day the violation occurs.

32 (A) When there is a discharge, and a cleanup and abatement  
33 order is issued, except as provided in subdivision (f), the civil  
34 liability shall not be less than five hundred dollars (\$500) for each  
35 day in which the discharge occurs and for each day the cleanup  
36 and abatement order is violated.

37 (B) When there is no discharge, but an order issued by the  
38 regional board is violated, except as provided in subdivision (f),  
39 the civil liability shall not be less than one hundred dollars (\$100)  
40 for each day in which the violation occurs.

1 (2) The civil liability on a per gallon basis shall not exceed ten  
2 dollars (\$10) for each gallon of waste discharged.

3 (f) A regional board shall not administratively impose civil  
4 liability in accordance with paragraph (1) of subdivision (e) in an  
5 amount less than the minimum amount specified, unless the  
6 regional board makes express findings setting forth the reasons  
7 for its action based upon the specific factors required to be  
8 considered pursuant to Section 13327.

9 (g) The Attorney General, upon request of a regional board or  
10 the state board, shall petition the superior court to impose, assess,  
11 and recover the sums. Except in the case of a violation of a cease  
12 and desist order, a regional board or the state board shall make the  
13 request only after a hearing, with due notice of the hearing given  
14 to all affected persons. In determining that amount, the court shall  
15 be subject to Section 13351.

16 (h) Article 3 (commencing with Section 13330) and Article 6  
17 (commencing with Section 13360) apply to proceedings to impose,  
18 assess, and recover an amount pursuant to this article.

19 (i) A person who incurs any liability established under this  
20 section shall be entitled to contribution for that liability from a  
21 third party, in an action in the superior court and upon proof that  
22 the discharge was caused in whole or in part by an act or omission  
23 of the third party, to the extent that the discharge is caused by the  
24 act or omission of the third party, in accordance with the principles  
25 of comparative fault.

26 (j) Remedies under this section are in addition to, and do not  
27 supersede or limit, any and all other remedies, civil or criminal,  
28 except that no liability shall be recoverable under subdivision (b)  
29 for any discharge for which liability is recovered under Section  
30 13385.

31 (k) (1) Notwithstanding any other law, all funds generated by  
32 the imposition of liabilities pursuant to this section shall be  
33 deposited into the Waste Discharge Permit Fund. These moneys  
34 shall be separately accounted for, and, except as otherwise provided  
35 in paragraph (2), shall be expended by the state board, upon  
36 appropriation by the Legislature, to assist regional boards, and  
37 other public agencies with authority to clean up waste or abate the  
38 effects of the waste, in cleaning up or abating the effects of the  
39 waste on waters of the state or for the purposes authorized in  
40 Section 13443.

1 (2) From July 1, 2011, to June 30, ~~2015~~ 2017, inclusive, funds  
2 generated by the imposition of liabilities pursuant to this section  
3 shall be made available to the State Department of Public Health,  
4 upon appropriation by the Legislature, for the purposes of Chapter  
5 7.3 (commencing with Section 13560), in the following amounts:

6 (A) Up to five hundred thousand dollars (\$500,000) in the  
7 2011–12 fiscal year.

8 (B) Up to five hundred thousand dollars (\$500,000) in the  
9 2012–13 fiscal year.

10 (C) Up to five hundred thousand dollars (\$500,000) in the  
11 2013–14 fiscal year.

12 (D) Up to five hundred thousand dollars (\$500,000) in the  
13 2014–15 fiscal year.

14 (E) *Up to five hundred thousand dollars (\$500,000) in the*  
15 *2015–16 fiscal year.*

16 (F) *Up to five hundred thousand dollars (\$500,000) in the*  
17 *2016–17 fiscal year.*

18 SEC. 2. Section 13521 of the Water Code is amended to read:

19 13521. The State Department of Public Health shall establish  
20 uniform statewide recycling criteria for each varying type of use  
21 of recycled water where the use involves the protection of public  
22 health.

23 SEC. 3. Chapter 7.3 (commencing with Section 13560) is added  
24 to Division 7 of the Water Code, to read:

25  
26 CHAPTER 7.3. DIRECT AND INDIRECT POTABLE REUSE

27  
28 13560. The Legislature finds and declares the following:

29 (a) In February 2009, the state board unanimously adopted, as  
30 Resolution No. 2009-0011, an updated water recycling policy,  
31 which includes the goal of increasing the use of recycled water in  
32 the state over 2002 levels by at least 1,000,000 acre-feet per year  
33 by 2020 and by at least 2,000,000 acre-feet per year by 2030.

34 (b) Section 13521 requires the department to establish uniform  
35 statewide recycling criteria for each varying type of use of recycled  
36 water where the use involves the protection of public health.

37 (c) *Recycled water has been used in California since 1962 for*  
38 *indirect potable reuse for groundwater recharge with the approval*  
39 *of the State Department of Public Health and the State Water*  
40 *Resources Control Board.*

1 (e)

2 (d) The use of recycled water for indirect potable reuse is critical  
3 to achieving the state board's goals for increased use of recycled  
4 water in the state. If direct potable reuse can be demonstrated to  
5 be safe and feasible, implementing direct potable reuse would  
6 further aid in achieving the state board's recycling goals.

7 ~~(d) Although there~~

8 (e) *There* has been much scientific research on public health  
9 issues associated with indirect potable reuse through groundwater  
10 ~~recharge, recharge. However,~~ there are a number of significant  
11 unanswered questions regarding indirect potable reuse through  
12 surface water augmentation and direct potable reuse.

13 (e)

14 (f) Achievement of ~~these~~ *the state board's* goals depends on the  
15 timely development of uniform statewide recycling criteria for  
16 indirect and direct potable water reuse.

17 (g) *This chapter is not intended to delay, invalidate, or reverse*  
18 *any study or project, or development of regulations by the*  
19 *department, the state board, or the regional boards regarding the*  
20 *use of recycled water for indirect potable reuse for groundwater*  
21 *recharge, indirect potable reuse through reservoir augmentation,*  
22 *or direct potable reuse.*

23 (h) *This chapter shall not be construed to delay, invalidate, or*  
24 *reverse the department's ongoing review of projects consistent*  
25 *with Section 116551 of the Health and Safety Code.*

26 13561. For purposes of this chapter, the following terms have  
27 the following meanings:

28 (a) "Department" means the State Department of Public Health.

29 ~~(b) "Direct potable reuse" means the use of recycled water for~~  
30 ~~drinking purposes directly after treatment.~~

31 ~~(c) "Indirect potable reuse" means the use of recycled water for~~  
32 ~~drinking purposes after replenishment of a groundwater basin or~~  
33 ~~aquifer, or after the placement of recycled water into a surface~~  
34 ~~water reservoir.~~

35 ~~(d) "Surface water augmentation" means the placement of~~  
36 ~~recycled water into a surface water reservoir used as a source of~~  
37 ~~drinking water.~~

38 (b) *"Direct potable reuse" means the planned introduction of*  
39 *recycled water either directly into a public water system, as defined*

1 *in Section 116275 of the Health and Safety Code, or into a raw*  
2 *water supply immediately upstream of a water treatment plant.*

3 (c) *“Indirect potable reuse for groundwater recharge” means*  
4 *the planned use of recycled water for replenishment of a*  
5 *groundwater basin or an aquifer that has been designated as a*  
6 *source of water supply for a public water system, as defined in*  
7 *Section 116275 of the Health and Safety Code.*

8 (d) *“Indirect potable reuse through reservoir augmentation”*  
9 *means the planned placement of recycled water into a surface*  
10 *water reservoir used as a source of domestic drinking water supply.*

11 (e) *“Uniform water recycling criteria” has the same meaning*  
12 *as in Section 13521.*

13 13562. (a) ~~The~~ *(1) On or before December 31, 2013, the*  
14 *department shall develop and adopt uniform water recycling criteria*  
15 *for indirect potable water reuse in accordance with the following*  
16 *subcategories of this use on the following schedule:*

17 ~~(1) For groundwater recharge, by December 31, 2013.~~

18 ~~(2) For surface water augmentation, by December 31, 2014.~~  
19 *reuse for groundwater recharge.*

20 *(2) On or before December 31, 2016, the department shall*  
21 *develop and adopt uniform water recycling criteria for indirect*  
22 *potable reuse through reservoir augmentation.*

23 (b) Adoption of uniform water recycling criteria by the  
24 department is subject to the requirements of Chapter 3.5  
25 (commencing with Section 11340) of Part 1 of Division 3 of Title  
26 2 of the Government Code.

27 13563. (a) (1) The department shall investigate and report to  
28 the Legislature on the feasibility of developing uniform water  
29 recycling criteria for direct potable reuse.

30 (2) The department shall complete a public review draft of its  
31 report by ~~September 30, 2015~~ *June 30, 2016*. The department shall  
32 provide the public not less than 45 days to review and comment  
33 on the public review draft.

34 (3) The department shall provide a final report to the Legislature  
35 by ~~December 31, 2015~~ *2016*. The department shall make the final  
36 report available to the public.

37 (b) In conducting the investigation pursuant to subdivision (a),  
38 the department shall examine all of the following:

39 (1) The availability and reliability of recycled water treatment  
40 technologies necessary to ensure the protection of public health.

1 (2) Multiple barriers and sequential treatment processes that  
2 may be appropriate at wastewater and water treatment facilities.

3 (3) Available information on health effects.

4 (4) Mechanisms that should be employed to protect public health  
5 if problems are found in recycled water that is being served to the  
6 public as a potable water supply, including, but not limited to, the  
7 failure of treatment systems at the recycled water treatment facility.

8 (5) Monitoring needed to ensure protection of public health,  
9 including, but not limited to, the identification of appropriate  
10 indicator and surrogate constituents.

11 (6) Any other scientific or technical issues that may be  
12 necessary, including, but not limited to, the need for additional  
13 research.

14 *(c) (1) Notwithstanding Section 10231.5 of the Government*  
15 *Code, the requirement for submitting a report imposed under*  
16 *paragraph (3) of subdivision (a) is inoperative on December 31,*  
17 *2020.*

18 *(2) A report to be submitted pursuant to paragraph (3) of*  
19 *subdivision (a) shall be submitted in compliance with Section 9795*  
20 *of the Government Code.*

21 *13564. In developing uniform recycling criteria for indirect*  
22 *potable reuse through reservoir augmentation, the department*  
23 *shall consider all of the following:*

24 *(a) The final report from the National Water Research Institute*  
25 *Independent Advisory Panel for the City of San Diego Indirect*  
26 *Potable Reuse/Reservoir Augmentation (IPR/RA) Demonstration*  
27 *Project.*

28 *(b) Monitoring results of research and studies regarding indirect*  
29 *potable reuse through reservoir augmentation.*

30 *(c) Results of demonstration studies conducted for purposes of*  
31 *approval of projects using indirect potable reuse through reservoir*  
32 *augmentation.*

33 *(d) Epidemiological studies and risk assessments associated*  
34 *with projects using indirect potable reuse through reservoir*  
35 *augmentation.*

36 *(e) Applicability of the advanced treatment technologies*  
37 *required for recycled water projects, including, but not limited to,*  
38 *indirect potable reuse for groundwater recharge projects.*

39 *(f) Water quality, limnology, and health risk assessments*  
40 *associated with existing potable water supplies subject to*



1 *discharges from municipal wastewater, stormwater, and*  
2 *agricultural runoff.*

3 *(g) Recommendations of the State of California Constituents of*  
4 *Emerging Concern Recycled Water Policy Science Advisory Panel.*

5 *(h) State funded research pursuant to Section 79144 and*  
6 *subdivision (b) of Section 79145.*

7 *(i) Research and recommendations from the United States*  
8 *Environmental Protection Agency Guidelines for Water Reuse.*

9 *(j) Other relevant research and studies regarding indirect*  
10 *potable reuse of recycled water.*

11 ~~13564.~~

12 13565. (a) (1) The department shall convene and administer  
13 an expert panel for the purposes of advising the department on  
14 *public health issues and* scientific and technical matters regarding  
15 ~~the development of uniform water recycling criteria for indirect~~  
16 ~~potable water reuse through surface water augmentation, and the~~  
17 ~~investigation of the feasibility of developing uniform water~~  
18 ~~recycling criteria for direct potable reuse.~~

19 (2) The expert panel shall be comprised, at a minimum, of a  
20 toxicologist, ~~a certified engineering geologist or certified~~  
21 ~~hydrogeologist,~~ an engineer licensed in the state with at least three  
22 years' experience in wastewater treatment and public water supply,  
23 *treatment, an engineer licensed in the state with at least three*  
24 *years' experience in treatment of drinking water supplies and*  
25 *knowledge of drinking water standards, an epidemiologist, a*  
26 *microbiologist, and a chemist.*

27 (3) Members of the expert panel may be reimbursed for  
28 reasonable and necessary travel expenses.

29 ~~(4) Notwithstanding paragraphs (2) and (3), the department may~~  
30 ~~use the National Water Research Institute Independent Advisory~~  
31 ~~Panel for the City of San Diego Indirect Potable Reuse/Reservoir~~  
32 ~~Augmentation (IPR/RA) Demonstration Project as the expert panel~~  
33 ~~for the purposes of paragraph (1), if the advisory panel agrees to~~  
34 ~~be the expert panel for the purposes of that paragraph.~~

35 (b) (1) The department may appoint an advisory group, task  
36 force, or other group, comprised of no fewer than nine  
37 representatives of water and wastewater agencies, local public  
38 health officers, environmental organizations, environmental justice  
39 organizations, ~~and~~ public health nongovernmental organizations,  
40 *and the business community, to advise the department regarding*

1 *the development of uniform water recycling criteria for direct*  
2 *potable reuse.*

3 (2) Environmental, environmental justice, and public health  
4 nongovernmental organization representative members of the  
5 advisory group, task force, or other group may be reimbursed for  
6 reasonable and necessary travel expenses.

7 ~~13565. In~~

8 *13566. In performing its investigation of the feasibility of*  
9 *developing the uniform water recycling criteria for indirect potable*  
10 *reuse and the investigation of the feasibility of developing uniform*  
11 *water recycling criteria for direct potable reuse, the department*  
12 *shall consider all of the following:*

13 (a) Recommendations from the expert panel appointed pursuant  
14 to subdivision (a) of Section ~~13564~~ *13565.*

15 (b) Recommendations from an advisory group, task force, or  
16 other group appointed by the department pursuant to subdivision  
17 (b) of Section ~~13564~~ *13565.*

18 (c) Regulations and guidelines for these activities from  
19 jurisdictions in other states ~~or, the federal government, or other~~  
20 countries.

21 (d) Research by the state board regarding unregulated pollutants,  
22 as developed pursuant to Section 10 of the recycled water policy  
23 adopted by state board Resolution No. 2009-0011.

24 ~~(e) Recommendations from the National Water Research~~  
25 ~~Institute Independent Advisory Panel for the City of San Diego~~  
26 ~~Indirect Potable Reuse/Reservoir Augmentation (IPR/RA)~~  
27 ~~Demonstration Project.~~

28 (e) *Results of investigations pursuant to Section 13563.*

29 (f) *Water quality and health risk assessments associated with*  
30 *existing potable water supplies subject to discharges from*  
31 *municipal wastewater, stormwater, and agricultural runoff.*

32 ~~13566.~~

33 *13567. An action authorized pursuant to this chapter shall be*  
34 *consistent, to the extent applicable, with the federal Clean Water*  
35 *Act (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking Water*  
36 *Act (42 U.S.C. Sec. 300f et seq.), this division, and the California*  
37 *Safe Drinking Water Act (Chapter 4 (commencing with Section*  
38 *116270) of Part 12 of Division 104 of the Health and Safety Code).*

1 13569. The department may accept funds from any source, and  
2 may expend these funds, upon appropriation by the Legislature,  
3 for the purposes of this chapter.

O