

AMENDED IN ASSEMBLY AUGUST 20, 2010

AMENDED IN ASSEMBLY AUGUST 16, 2010

AMENDED IN SENATE JUNE 1, 2010

AMENDED IN SENATE APRIL 26, 2010

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**

(1) *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 adopt uniform water recycling criteria for indirect potable water reuse for groundwater recharge, as defined, by December 31, 2013. The bill would require the department to develop and adopt uniform water

recycling criteria for surface water augmentation, as defined, by December 31, 2016, if a specified expert panel convened pursuant to the bill finds that the criteria would adequately protect public health. 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 would require the department, in consultation with the State Water Resources Control Board, to report to the Legislature from 2011 to 2016, inclusive, as part of the annual budget process, on the progress towards developing and adopting the water recycling criteria for surface water augmentation and its investigation of the feasibility of developing water recycling criteria for direct potable reuse. ~~The~~ *The bill would require the State Water Resources Control Board to enter into an agreement with the department to assist in implementing the water recycling criteria provisions.*

*(2) Existing law imposes specified civil liabilities for violations of water quality requirements, and requires all funds generated by the imposition of those liabilities to be deposited in the Waste Discharge Permit Fund. Existing law requires these moneys to be expended by the State Water Resources Control Board, upon appropriation by the Legislature, to assist California regional water quality control boards and other public agencies in cleaning up or abating the effects of waste on waters of the state.*

~~This bill, from July 1, 2011, to June 30, 2017, inclusive, would require funds generated by the imposition of specified liabilities for violations of water quality requirements those funds to additionally be made available, upon appropriation by the Legislature, to the department state board for purposes of developing and adopting assisting with the development and adoption of the water recycling criteria.~~

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,

1 or other order or prohibition issued, reissued, or amended by a  
2 regional board or the state board, discharges waste, or causes or  
3 permits waste to be deposited where it is discharged, into the waters  
4 of the state, or (3) causes or permits any oil or any residuary  
5 product of petroleum to be deposited in or on any of the waters of  
6 the state, except in accordance with waste discharge requirements  
7 or other actions or provisions of this division, shall be liable civilly,  
8 and remedies may be proposed, in accordance with subdivision  
9 (d) or (e).

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

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

19 (3) For purposes of this subdivision, the term “discharge” does  
20 not include an emission excluded from the applicability of Section  
21 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to  
22 Environmental Protection Agency regulations interpreting Section  
23 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

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

27 (1) An act of war.

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

32 (3) Negligence on the part of the state, the United States, or any  
33 department or agency thereof. However, this paragraph shall not  
34 be interpreted to provide the state, the United States, or any  
35 department or agency thereof a defense to liability for any  
36 discharge caused by its own negligence.

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

1 (5) Any other circumstance or event that causes the discharge  
2 despite the exercise of every reasonable precaution to prevent or  
3 mitigate the discharge.

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

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

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

10 (e) The state board or a regional board may impose civil liability  
11 administratively pursuant to Article 2.5 (commencing with Section  
12 13323) of Chapter 5 either on a daily basis or on a per gallon basis,  
13 but not on both.

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

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

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

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

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

33 (g) The Attorney General, upon request of a regional board or  
34 the state board, shall petition the superior court to impose, assess,  
35 and recover the sums. Except in the case of a violation of a cease  
36 and desist order, a regional board or the state board shall make the  
37 request only after a hearing, with due notice of the hearing given  
38 to all affected persons. In determining the amount to be imposed,  
39 assessed, or recovered, the court shall be subject to Section 13351.

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

4 (i) A person who incurs any liability established under this  
5 section shall be entitled to contribution for that liability from a  
6 third party, in an action in the superior court and upon proof that  
7 the discharge was caused in whole or in part by an act or omission  
8 of the third party, to the extent that the discharge is caused by the  
9 act or omission of the third party, in accordance with the principles  
10 of comparative fault.

11 (j) Remedies under this section are in addition to, and do not  
12 supersede or limit, any and all other remedies, civil or criminal,  
13 except that no liability shall be recoverable under subdivision (b)  
14 for any discharge for which liability is recovered under Section  
15 13385.

16 (k) ~~(4)~~ Notwithstanding any other law, all funds generated by  
17 the imposition of liabilities pursuant to this section shall be  
18 deposited into the Waste Discharge Permit Fund. These moneys  
19 shall be separately accounted for, ~~and, except as otherwise provided~~  
20 ~~in paragraph (2); and shall be expended by the state board, upon~~  
21 ~~appropriation by the Legislature, to assist regional boards, and~~  
22 ~~other public agencies with authority to clean up waste or abate the~~  
23 ~~effects of the waste, in cleaning up or abating the effects of the~~  
24 ~~waste on waters of the state, or for the purposes authorized in~~  
25 ~~Section 13443 Section 13443, or to assist in implementing Chapter~~  
26 ~~7.3 (commencing with Section 13560).~~

27 ~~(2) From July 1, 2011, to June 30, 2017, inclusive, funds~~  
28 ~~generated by the imposition of liabilities pursuant to this section~~  
29 ~~shall be made available to the State Department of Public Health,~~  
30 ~~upon appropriation by the Legislature, for the purposes of Chapter~~  
31 ~~7.3 (commencing with Section 13560).~~

32 SEC. 2. Section 13521 of the Water Code is amended to read:  
33 13521. The State Department of Public Health shall establish  
34 uniform statewide recycling criteria for each varying type of use  
35 of recycled water where the use involves the protection of public  
36 health.

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

## 1 CHAPTER 7.3. DIRECT AND INDIRECT POTABLE REUSE

2  
3 13560. The Legislature finds and declares the following:

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

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

12 (c) The use of recycled water for indirect potable reuse is critical  
13 to achieving the state board's goals for increased use of recycled  
14 water in the state. If direct potable reuse can be demonstrated to  
15 be safe and feasible, implementing direct potable reuse would  
16 further aid in achieving the state board's recycling goals.

17 (d) Although there has been much scientific research on public  
18 health issues associated with indirect potable reuse through  
19 groundwater recharge, there are a number of significant unanswered  
20 questions regarding indirect potable reuse through surface water  
21 augmentation and direct potable reuse.

22 (e) Achievement of the state's goals depends on the timely  
23 development of uniform statewide recycling criteria for indirect  
24 and direct potable water reuse.

25 (f) This chapter is not intended to delay, invalidate, or reverse  
26 any study or project, or development of regulations by the  
27 department, the state board, or the regional boards regarding the  
28 use of recycled water for indirect potable reuse for groundwater  
29 recharge, surface water augmentation, or direct potable reuse.

30 (g) This chapter shall not be construed to delay, invalidate, or  
31 reverse the department's ongoing review of projects consistent  
32 with Section 116551 of the Health and Safety Code.

33 13561. For purposes of this chapter, the following terms have  
34 the following meanings:

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

36 (b) "Direct potable reuse" means the planned introduction of  
37 recycled water either directly into a public water system, as defined  
38 in Section 116275 of the Health and Safety Code, or into a raw  
39 water supply immediately upstream of a water treatment plant.

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

6 (d) “Surface water augmentation” means the planned placement  
7 of recycled water into a surface water reservoir used as a source  
8 of domestic drinking water supply.

9 (e) “Uniform water recycling criteria” has the same meaning  
10 as in Section 13521.

11 *13561.5. The state board shall enter into an agreement with*  
12 *the department to assist in implementing this chapter.*

13 13562. (a) (1) On or before December 31, 2013, the  
14 department shall adopt uniform water recycling criteria for indirect  
15 potable reuse for groundwater recharge.

16 (2) (A) Except as provided in subparagraph (C), on or before  
17 December 31, 2016, the department shall develop and adopt  
18 uniform water recycling criteria for surface water augmentation.

19 (B) Prior to adopting uniform water recycling criteria for surface  
20 water augmentation, the department shall submit the proposed  
21 criteria to the expert panel convened pursuant to subdivision (a)  
22 of Section 13565. The expert panel shall review the proposed  
23 criteria and shall adopt a finding as to whether, in its expert  
24 opinion, the proposed criteria would adequately protect public  
25 health.

26 (C) The department shall not adopt uniform water recycling  
27 criteria for surface water augmentation pursuant to subparagraph  
28 (A), unless and until the expert panel adopts a finding that the  
29 proposed criteria would adequately protect public health.

30 (b) Adoption of uniform water recycling criteria by the  
31 department is subject to the requirements of Chapter 3.5  
32 (commencing with Section 11340) of Part 1 of Division 3 of Title  
33 2 of the Government Code.

34 13563. (a) (1) The department shall investigate and report to  
35 the Legislature on the feasibility of developing uniform water  
36 recycling criteria for direct potable reuse.

37 (2) The department shall complete a public review draft of its  
38 report by June 30, 2016. The department shall provide the public  
39 not less than 45 days to review and comment on the public review  
40 draft.

1 (3) The department shall provide a final report to the Legislature  
2 by December 31, 2016. The department shall make the final report  
3 available to the public.

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

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

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

10 (3) Available information on health effects.

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

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

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

21 (c) (1) Notwithstanding Section 10231.5 of the Government  
22 Code, the requirement for submitting a report imposed under  
23 paragraph (3) of subdivision (a) is inoperative on December 31,  
24 2020.

25 (2) A report to be submitted pursuant to paragraph (3) of  
26 subdivision (a) shall be submitted in compliance with Section 9795  
27 of the Government Code.

28 13563.5. (a) The department, in consultation with the state  
29 board, shall report to the Legislature as part of the annual budget  
30 process, in each year from 2011 to 2016, inclusive, on the progress  
31 towards developing and adopting uniform water recycling criteria  
32 for surface water augmentation and its investigation of the  
33 feasibility of developing uniform water recycling criteria for direct  
34 potable reuse.

35 (b) (1) A written report submitted pursuant to subdivision (a)  
36 shall be submitted in compliance with Section 9795 of the  
37 Government Code.

38 (2) Pursuant to Section 10231.5 of the Government Code, this  
39 section is repealed on January 1, 2017.



1 13564. In developing uniform recycling criteria for surface  
2 water augmentation, the department shall consider all of the  
3 following:

4 (a) The final report from the National Water Research Institute  
5 Independent Advisory Panel for the City of San Diego Indirect  
6 Potable Reuse/Reservoir Augmentation (IPR/RA) Demonstration  
7 Project.

8 (b) Monitoring results of research and studies regarding surface  
9 water augmentation.

10 (c) Results of demonstration studies conducted for purposes of  
11 approval of projects using surface water augmentation.

12 (d) Epidemiological studies and risk assessments associated  
13 with projects using surface water augmentation.

14 (e) Applicability of the advanced treatment technologies required  
15 for recycled water projects, including, but not limited to, indirect  
16 potable reuse for groundwater recharge projects.

17 (f) Water quality, limnology, and health risk assessments  
18 associated with existing potable water supplies subject to  
19 discharges from municipal wastewater, stormwater, and agricultural  
20 runoff.

21 (g) Recommendations of the State of California Constituents  
22 of Emerging Concern Recycled Water Policy Science Advisory  
23 Panel.

24 (h) State funded research pursuant to Section 79144 and  
25 subdivision (b) of Section 79145.

26 (i) Research and recommendations from the United States  
27 Environmental Protection Agency Guidelines for Water Reuse.

28 (j) Other relevant research and studies regarding indirect potable  
29 reuse of recycled water.

30 13565. (a) (1) The department shall convene and administer  
31 an expert panel for the purposes of advising the department on  
32 public health issues and scientific and technical matters regarding  
33 development of uniform water recycling criteria for indirect potable  
34 reuse through surface water augmentation and investigation of the  
35 feasibility of developing uniform water recycling criteria for direct  
36 potable reuse.

37 (2) The expert panel shall be comprised, at a minimum, of a  
38 toxicologist, an engineer licensed in the state with at least three  
39 years' experience in wastewater treatment, an engineer licensed  
40 in the state with at least three years' experience in treatment of

1 drinking water supplies and knowledge of drinking water standards,  
2 an epidemiologist, a microbiologist, and a chemist.

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

5 (b) (1) The department may appoint an advisory group, task  
6 force, or other group, comprised of no fewer than nine  
7 representatives of water and wastewater agencies, local public  
8 health officers, environmental organizations, environmental justice  
9 organizations, public health nongovernmental organizations, and  
10 the business community, to advise the department regarding the  
11 development of uniform water recycling criteria for direct potable  
12 reuse.

13 (2) Environmental, environmental justice, and public health  
14 nongovernmental organization representative members of the  
15 advisory group, task force, or other group may be reimbursed for  
16 reasonable and necessary travel expenses.

17 13566. In performing its investigation of the feasibility of  
18 developing the uniform water recycling criteria for direct potable  
19 reuse, the department shall consider all of the following:

20 (a) Recommendations from the expert panel appointed pursuant  
21 to subdivision (a) of Section 13565.

22 (b) Recommendations from an advisory group, task force, or  
23 other group appointed by the department pursuant to subdivision  
24 (b) of Section 13565.

25 (c) Regulations and guidelines for these activities from  
26 jurisdictions in other states, the federal government, or other  
27 countries.

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

31 (e) Results of investigations pursuant to Section 13563.

32 (f) Water quality and health risk assessments associated with  
33 existing potable water supplies subject to discharges from  
34 municipal wastewater, stormwater, and agricultural runoff.

35 13567. An action authorized pursuant to this chapter shall be  
36 consistent, to the extent applicable, with the federal Clean Water  
37 Act (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking Water  
38 Act (42 U.S.C. Sec. 300f et seq.), this division, and the California  
39 Safe Drinking Water Act (Chapter 4 (commencing with Section  
40 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