

Assembly Bill No. 95

CHAPTER 2

An act to amend Sections 19606.1, 19607.5, 19608.3, 19620.1, and 19627.5 of, to amend and renumber Sections 19621.1, 19621.3, 19622.1, 19622.2, 19622.3, 19622.4, 19630.5, and 19639 of, and to repeal Sections 19606.3, 19606.4, 19620.2, 19621, 19621.2, 19630, 19632.5, 19632.6, 19635, 19638, and 19638.5 of, the Business and Professions Code, to add Section 5007 to the Public Resources Code, to add Section 326 to the Public Utilities Code, to amend Section 8352.6 of the Revenue and Taxation Code, to amend Section 13260 of the Water Code, and to amend Section 27 of Chapter 718 of the Statutes of 2010, relating to public resources, making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor March 24, 2011. Filed with
Secretary of State March 24, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 95, Committee on Budget. Public resources.

(1) Existing law establishes the Fair and Exposition Fund for the purpose of allocating moneys to provide financial support for the network of California fairs. Existing law requires that \$32,000,000 be transferred annually from the General Fund to the credit of a separate account of the fund. Existing law provides that the revenues in that separate account are continuously appropriated to the Department of Food and Agriculture for specified purposes. In addition, existing law requires the deposit of \$10,000,000 of the license fees for horse racing meetings into the fund and continuously appropriates those funds to the 51st District Agricultural Association for specified purposes.

This bill would repeal that annual transfer from the General Fund and those other provisions and make related changes.

(2) Existing law requires specified revenues received by the California Horse Racing Board to be deposited into the State Treasury to the credit of the Fair and Exposition Fund. Existing law provides that, in addition to those moneys deposited in the fund, the Legislature shall appropriate, and the board shall deposit in the fund, sums deemed necessary for the support of the board, as specified, and to the department for oversight of the network of California fairs, for contributions to the Unemployment Fund by the network of fairs, and for auditing of specified fairs. Any unallocated balance of revenues received by the board is continuously appropriated for allocation by the Secretary of Food and Agriculture for capital outlay to California fairs for specified projects or for general operational support.

This bill would repeal those provisions relating to revenues received by the board and would instead provide that, from revenue received by the department, the Legislature shall appropriate to the department sums deemed necessary for oversight of the network of California fairs and for auditing of specified fairs.

(3) Existing law requires the Secretary of Food and Agriculture to annually project the available revenues from the fund described above, and to prepare an annual expenditure plan for funds available from the fund. Existing law also requires the secretary to prepare and submit to the Department of Finance an estimate of the contributions, or the cost of benefits in lieu of contributions, payable to the Unemployment Fund by all California fairs, as specified.

This bill would delete those provisions. The bill would also make technical changes.

(4) Under existing law, the Department of Parks and Recreation has control of the state park system. The existing Tort Claims Act provides for the liability and immunity of a governmental entity for its acts or omissions that cause harm to persons.

This bill would require the Department of Parks and Recreation to achieve any required budget reductions by closing, partially closing, and reducing services at selected units of the state park system and would require the department to select the units to be closed based solely on specified factors.

The bill would provide immunity to a public entity and a public employee for injury or damage either caused by a condition of public property in or otherwise occurring at a state park system unit that is designated as closed, partially closed, or subject to service reduction by the department pursuant to these provisions.

(5) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, as defined. Existing law requires the commission, by January 10 of each year, to report to the Joint Legislative Budget Committee and appropriate fiscal and policy committees of the Legislature, on all sources and amounts of funding and actual and proposed expenditures related to specified entities or programs established by the commission. Existing law requires the commission to adopt an updated Conflict of Interest Code and Statement of Incompatible Activities.

This bill would require that the commission, by January 10 of each year, report to the Joint Legislative Budget Committee and appropriate fiscal and policy committees of the Legislature, on all sources and amounts of funding and actual and proposed expenditures related to interactions by the commission, its officers, or its staff with the California Public Utilities Commission Foundation. The bill would require that within 8 weeks of any contribution to the foundation made at the behest of a member of the commission, its officers, or its staff, that the commission report the contribution to the Joint Legislative Budget Committee and appropriate fiscal and policy committees of the Legislature and include a certification that the contribution does not violate the Conflict of Interest Code and Statement of Incompatible Activities.

(6) Existing law requires certain moneys on the first day of every month to be transferred from the Motor Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund that are attributable to taxes imposed upon distribution of motor vehicle fuel related to specified off-highway motor vehicles and off-highway vehicle activities. The moneys in the fund are required to be used, upon appropriation, for specified purposes related to off-highway motor vehicle recreation.

This bill would require the Controller to withhold \$833,000 from this monthly transfer, and transfer that amount to the General Fund.

(7) The Porter-Cologne Water Quality Control Act, with certain exceptions, requires a waste discharger to pay an annual fee established by the State Water Resources Control Board. The act requires the total amount of fees collected to equal that amount necessary to recover certain costs relating to the administration of waste discharge requirements. Revenues generated by the imposition of the fee are deposited in the Waste Discharge Permit Fund for expenditure, upon appropriation by the Legislature, for specified water quality purposes.

This bill, for the purpose of calculating the annual fee, would authorize recoverable costs to also include costs incurred by the State Water Resources Control Board and the California regional water quality control boards in the adoption, review, and revision of water quality control plans and state policies for water quality control.

(8) The Sacramento-San Joaquin Delta Reform Act of 2009 establishes the Delta Stewardship Council, which is required to develop, adopt, and commence implementation of a comprehensive management plan for the Delta (Delta Plan) by January 1, 2012. The act provides that the council is the successor to the California Bay-Delta Authority, which previously was required to carry out programs, projects, and activities to implement the CALFED Bay-Delta Program with other implementing agencies.

Existing law requires the Governor, on or before April 1, 2011, to submit to the Legislature a report on the budget for the 2011–12 fiscal year for all state agency programs that implement water and ecosystem restoration activities in the Sacramento-San Joaquin Delta using a zero-based budget methodology, as defined. Existing law requires that budget to complement the budget for the CALFED Bay-Delta Program, and requires all state expenditures reported in the budget for the CALFED Bay-Delta Program for the 2011–12 fiscal year to be reported using a zero-based budget methodology.

This bill would require the Governor to submit the report on the budget using zero-based budget methodology for the 2012–13 fiscal year, instead of the 2011–12 fiscal year, and would require that report to be submitted to the Legislature by April 1, 2012, instead of April 1, 2011. The bill would additionally require the council, in developing a zero-based budget for these purposes, to conduct a programmatic review of CALFED Bay-Delta Program expenditures for consistency with the Delta Plan.

(9) The bill would appropriate \$1,000 from the General Fund to the Department of Parks and Recreation for administrative costs.

(10) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

(11) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

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

SECTION 1. Section 19606.1 of the Business and Professions Code is amended to read:

19606.1. (a) All license fees from satellite wagering that are deposited in the Fair and Exposition Fund shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, are continuously appropriated from that account to the Department of Food and Agriculture, for allocation by the Secretary of Food and Agriculture, at his or her discretion, for the purposes set forth in paragraphs (1) to (6), inclusive. The concurrence of the Director of Finance shall be required for allocations pursuant to paragraphs (1) and (2). Allocations pursuant to paragraphs (3) to (6), inclusive, shall be made with the concurrence of the Joint Committee on Fairs Allocation and Classification.

(1) For the repayment of the principal of, interest on, and costs of issuance of, and as security, including any coverage factor, pledged to the payment of, bonds issued or to be issued by a joint powers agency or other debt service or expense, including repayment of any advances made or security required by any provider of credit enhancement or liquidity for those bonds or other indebtedness or expenses of maintaining that credit enhancement or liquidity, incurred for the purpose of constructing or acquiring improvements at a fair's racetrack inclosure, satellite wagering facilities at fairs, health and safety repair projects, or handicapped access compliance projects at fairs or for the purpose of refunding bonds or other indebtedness incurred for those purposes. As used in this paragraph, "coverage factor" means revenues in excess of the amount necessary to pay debt service on the bonds or other indebtedness, up to an amount equal to 100 percent more than the amount of that debt service, which a joint powers agency, pursuant to the resolution or indenture under which the bonds or other indebtedness are or will be issued, pledges as additional security for the payment of that debt service or is required to have or maintain as a condition to the issuance

of additional bonds or other indebtedness. Notwithstanding any other provision of law, the department may also commit any funds available for allocation under Article 10 (commencing with Section 19620) to complete projects funded under this paragraph in the priority described in this paragraph.

(2) For payment to the State Race Track Leasing Commission to be pledged for the repayment of debt necessary to construct a racetrack grandstand at the 22nd District Agricultural Association fairgrounds. This payment shall be made only if the Secretary of Food and Agriculture determines, annually, that all other pledged revenues have been applied to the repayment of that debt and have been determined by the secretary to be inadequate for that purpose.

(3) For the payment of expenses incurred in establishing and operating satellite wagering facilities at fairs.

(4) For the support of an equipment and operating fund to produce and display a consolidated California signal at satellite wagering facilities and fairs.

(5) For health and safety repair projects at fairs, which includes fire and life safety improvement projects, California Code of Regulations compliance projects, and long-term deferred maintenance projects.

(6) For the development and payment of revenue generating projects, the establishment of pilot projects to restructure the current fair system, and for projects realizing a cost savings for more efficient utilization of existing fair resources.

(b) The Secretary of Food and Agriculture may not make an allocation for purposes of paragraphs (2) to (6), inclusive, of subdivision (a) until the payments required in any fiscal year pursuant to paragraph (1) of subdivision (a) have been funded.

(c) Pursuant to subdivision (a), the Joint Committee on Fairs Allocation and Classification shall review and concur, or not concur, with the secretary's determination of the allocations to be made pursuant to paragraphs (3) to (6), inclusive, of subdivision (a) in total, and the committee may not add to, or delete projects or line items from, the proposed allocations.

(d) Approval of the Joint Committee on Fairs Allocation and Classification is deemed complete when one of the following conditions is met:

(1) The annual Budget Act is enacted.

(2) If the secretary's recommendations are received by the Joint Committee on Fairs Allocation and Classification after the enactment of the annual Budget Act, the recommendations shall be deemed approved 30 days after they are received unless they are rejected by the committee.

(e) If the Joint Committee on Fairs Allocation and Classification does not concur with the secretary's recommendations, the secretary may submit another set of recommendations to the committee pursuant to this section.

(f) The payments required in any fiscal year for the purposes of paragraphs (1) to (3), inclusive, of subdivision (a) shall be made before any transfer is made pursuant to subdivision (g).

(g) Except as otherwise provided in subdivision (f), if the revenues deposited in the separate account exceed eleven million dollars (\$11,000,000) in any fiscal year, the amount in excess of eleven million dollars (\$11,000,000) shall be transferred to the Fair and Exposition Fund for allocation in accordance with Section 19620.1.

(h) All of the costs of administering the account created by subdivision (a) shall be charged to the account.

SEC. 2. Section 19606.3 of the Business and Professions Code is repealed.

SEC. 3. Section 19606.4 of the Business and Professions Code is repealed.

SEC. 4. Section 19607.5 of the Business and Professions Code is amended to read:

19607.5. (a) Notwithstanding any other provision of law, if both a fair and a thoroughbred association are licensed by the board to conduct live racing meetings within the northern zone during the same calendar period, signals of both racing programs shall be accepted at each live racing meeting within the northern zone and at all satellite wagering facilities eligible to receive these programs.

(b) Notwithstanding any other provision of law, in order to ensure that fairs which previously had an exclusive right to send their signals to satellite wagering facilities in the northern zone during periods of overlap do not lose commission revenues from satellite wagering, each fair that conducts its meeting during the period described in subdivision (a) shall receive the following satellite wagering commissions:

(1) With respect to the 2nd District Agricultural Association in Stockton, the commissions payable to the fair from satellite wagering during the period described in subdivision (a) shall be the greater of any of the following:

(A) The actual commission earned by the fair from satellite wagering on its live races during that period.

(B) Fifty percent of the total combined satellite wagering commissions payable to the thoroughbred association and the fair during that period.

(C) One hundred ten percent of the satellite wagering commissions paid to the fair during its live racing meeting in 1990.

If the satellite wagering commissions received by the 2nd District Agricultural Association are less than the greater of the amounts specified in subparagraph (B) or (C), the thoroughbred association shall pay to the fair from amounts deducted from satellite wagering on its meeting and before distribution of any satellite wagering commissions and purses on its meeting, an amount equal to the difference between the actual satellite wagering commissions received by the fair in that year and the applicable amount from subparagraph (B) or (C). No additional satellite wagering commission shall be paid to the fair by an association unless the fair conducts live racing during the period described in subdivision (a).

(2) With respect to the California Exposition and State Fair in Sacramento, the commissions payable to the fair from satellite wagering during the period described in subdivision (a) shall be the greater of either of the following:

(A) The actual commission earned by the fair from satellite wagering on its live races during that period.

(B) Sixty percent of the total combined satellite wagering commissions payable to the thoroughbred association and the fair during that period.

If the satellite wagering commissions received by the California Exposition and State Fair are less than the amount described in (B), the thoroughbred association shall pay to the fair from amounts deducted from satellite wagering on its meeting and before distribution of any satellite wagering commissions and purses on its meeting, an amount equal to the difference between the actual satellite wagering commissions received by the fair in that year and the amount described in (B). No additional satellite wagering commission shall be paid to the fair by an association unless the fair conducts live racing during the period described in subdivision (a).

(c) During any periods described in subdivision (a), including periods of overlap for fairs not specified in subdivision (b), the thoroughbred association shall deduct the same percentage from the total amount wagered in its daily conventional and exotic parimutuel pools as the percentage deducted by the fair meeting. The amounts deducted shall be distributed as otherwise provided in this article, with the following exceptions:

(1) If the percentages deducted from the conventional and exotic parimutuel pools of the thoroughbred association under this subdivision exceed the percentages deducted from the association's pools during periods other than those described under subdivision (a), the amount deducted which is equivalent to the difference between those percentages shall be distributed by the thoroughbred association equally between commissions and purses.

(2) If a thoroughbred association and the 2nd District Agricultural Association in Stockton or the California Exposition and State Fair in Sacramento both conduct live racing meetings during any period described in subdivision (a), the total amount deducted shall be distributed by both the association and fair in the percentages specified for fair meetings in subdivision (b) of Section 19605.7.

This subdivision does not require any portion of the additional deduction to be distributed pursuant to subdivision (c) of Section 19614.

(d) Notwithstanding any other law, an association and fair that conduct their meeting pursuant to subdivision (b) shall combine the operating expenses incurred at satellite wagering facilities during the period described in subdivision (a). For purposes of this subdivision only, the combined satellite wagering operating expenses of the association and the fair during the period described in subdivision (a) shall not exceed the actual expenses, or 6 percent of the combined parimutuel pool at satellite wagering facilities, whichever amount is less.

SEC. 5. Section 19608.3 of the Business and Professions Code is amended to read:

19608.3. (a) Funds allocated by the Secretary of Food and Agriculture pursuant to paragraph (5) of subdivision (a) of Section 19606.1 for fire and life safety improvement projects, California Code of Regulations compliance projects, and long-term deferred maintenance projects at fairs in the northern

zone shall be allocated in accordance with a project schedule determined by the Department of Food and Agriculture in compliance with this section.

(b) The department shall prepare a three-year schedule of these projects which commences July 1, 1987, and shall annually update the schedule. The schedule shall list individual project costs, contain a project description, and specify estimated project completion dates.

SEC. 6. Section 19620.1 of the Business and Professions Code is amended to read:

19620.1. From the total revenue received by the department, exclusive of money received pursuant to Sections 19640 and 19641, the Legislature shall annually appropriate to the department those sums as it deems necessary for the following purposes:

(a) For the oversight of the network of California fairs receiving money from the fund.

(b) For the auditing of all district agricultural association fairs, county fairs, and citrus fruit fairs.

SEC. 7. Section 19620.2 of the Business and Professions Code is repealed.

SEC. 8. Section 19621 of the Business and Professions Code is repealed.

SEC. 9. Section 19621.1 of the Business and Professions Code is amended and renumbered to read:

19621. Notwithstanding any other law, neither the state nor the Department of Food and Agriculture is liable for any contract or tort of, or any action taken or any failure to act by, any fair in the network of California fairs that does not comply with the requirements of Section 19622.2.

No member of the fair board, or any employee or agent thereof, is personally liable for the contracts or actions of the fair board, and no member of the fair board or employee or agent thereof is responsible individually in any way to any other person for error in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member of the fair board shall be held responsible individually for any act or omission of any other member of the fair board. The liability of the members of the fair board is several and not joint, and no member is liable for the default of any other member.

SEC. 10. Section 19621.2 of the Business and Professions Code is repealed.

SEC. 11. Section 19621.3 of the Business and Professions Code is amended and renumbered to read:

19621.1. (a) The Secretary of Food and Agriculture shall prepare and submit to the Department of Finance an estimate of revenue to be deposited in the fund and allocations to be made from the fund for each fiscal year.

The Director of Finance may authorize short-term, cashflow loans from the unappropriated surplus of the General Fund to the Fair and Exposition Fund if all of the following conditions are met:

(1) The loan will be repaid during the same fiscal year in which it is made.

(2) No loan exceeds the amount remaining to be allocated in any fiscal year or 75 percent of the revenue estimated to be deposited in the Fair and Exposition Fund during the remainder of the fiscal year.

(b) The Secretary of Food and Agriculture shall notify the Controller when loans under this section are no longer required and any unnecessary loan funds shall be returned to the General Fund.

SEC. 12. Section 19622.1 of the Business and Professions Code is amended and renumbered to read:

19622. (a) In order to maintain their eligibility to receive funds or to utilize state assets, the fairs specified in Section 19418 shall do all of the following:

(1) File an annual statement of operations with the Department of Food and Agriculture.

(2) Conduct an annual fair that includes agriculture and other community-relevant exhibits and competitions.

(b) The Department of Food and Agriculture may withhold or restrict allocations to fairs that do not comply with this section or the fiscal standards or administrative standards established by the department. The department shall establish an appeal process for fairs regarding funds that are withheld or restricted.

SEC. 13. Section 19622.2 of the Business and Professions Code is amended and renumbered to read:

19622.1. (a) The authority of the Department of Food and Agriculture shall include, but is not limited to, requiring the California Exposition and State Fair to meet all applicable standards prescribed by the department.

(b) The department may delegate approval authority for such matters as the department may determine to the Board of Directors of the California Exposition and State Fair if the fair complies with this section.

(c) Notwithstanding any other law, the department may assume all rights, duties, and powers of the Board of Directors of the California Exposition and State Fair if the department determines there is insufficient fiscal or administrative control. The board of directors shall again exercise these rights, duties, and powers when the department determines that the fair has been restored to solvency and is in compliance with this section.

(d) The department may petition a court of competent jurisdiction for an order appointing the department, or a person designated by the department, as a receiver if it determines that the California Exposition and State Fair is insolvent, or is in imminent danger of insolvency. The court shall appoint a receiver upon showing that the fair is insolvent, or is in imminent danger of insolvency.

(e) For the purposes of this section, “insolvency” means that the California Exposition and State Fair is unable to discharge its debts as they become due in the usual course of business.

(f) The General Fund and the Fairs and Exposition Fund shall be held harmless from any debts, liabilities, settlements, judgments, or liens incurred by the California Exposition and State Fair, including any deficiency in operating funds.

SEC. 14. Section 19622.3 of the Business and Professions Code is amended and renumbered to read:

19622.2. (a) The authority of the Department of Food and Agriculture shall include, but is not limited to, requiring district agricultural associations to meet all applicable standards prescribed by the Department of Food and Agriculture.

(b) The department may delegate approval authority for such matters as the department may determine to the board of directors if the board complies with this section. The department shall report annually to the Joint Committee on Fairs Allocation and Classification the names of fairs that are delegated that authority.

(c) Notwithstanding any other law, and in order to protect the integrity of the Fair and Exposition Fund, the department may assume any or all rights, duties, and powers of the board of directors of a district agricultural association if the department reasonably determines that there is insufficient fiscal or administrative control. The board of directors shall again exercise these rights, duties, and powers when the department determines that the fair is in compliance with this section. The department shall report annually to the Joint Committee on Fairs Allocation and Classification the names of fairs with respect to which the department has taken the action prescribed in this subdivision and subdivision (d).

(d) The department may petition a court of competent jurisdiction for an order appointing the department, or a person designated by the department, as a receiver if it determines that the fair is insolvent, or is in imminent danger of insolvency. The court shall appoint a receiver upon a showing that the fair is insolvent, or is in imminent danger of insolvency.

(e) For the purposes of this section, “insolvency” means that the district agricultural association is unable to discharge its debts as they become due in the usual course of business.

SEC. 15. Section 19622.4 of the Business and Professions Code is amended and renumbered to read:

19622.3. The authority of the Department of Food and Agriculture shall include, but is not limited to, requiring county fairs and citrus fruit fairs to do all of the following:

(a) Meet all applicable standards prescribed by the Department of Food and Agriculture.

(b) Submit to the department for review and approval every five years a written agreement specifying the operational, financial, and administrative responsibilities between the entity producing the fair and the host county, or the host agency.

SEC. 16. Section 19627.5 of the Business and Professions Code is amended to read:

19627.5. Notwithstanding Section 19623, any unanticipated revenues, other than any allocation from the state, which are in excess of the approved budget for any fiscal or calendar year of any California fair shall be retained by that fair.

These funds may be expended, without regard to any fiscal year, by any fair to which Section 19623 applies, upon approval by the board of directors of that fair, which shall be recorded in the official minutes of the fair approving a plan of expenditure.

SEC. 17. Section 19630 of the Business and Professions Code is repealed.

SEC. 18. Section 19630.5 of the Business and Professions Code is amended and renumbered to read:

19630. Notwithstanding any other law, any fair qualified to receive an allocation that has complied with the requirements set forth in subdivision (b) of Section 19622, with the approval of the Department of Food and Agriculture, may expend available funds for the construction or operation of recreational and cultural facilities of general public interest.

SEC. 19. Section 19632.5 of the Business and Professions Code is repealed.

SEC. 20. Section 19632.6 of the Business and Professions Code is repealed.

SEC. 21. Section 19635 of the Business and Professions Code is repealed.

SEC. 22. Section 19638 of the Business and Professions Code is repealed.

SEC. 23. Section 19638.5 of the Business and Professions Code is repealed.

SEC. 24. Section 19639 of the Business and Professions Code is amended and renumbered to read:

19638. The books and records of any county or citrus fruit fair or exposition receiving an appropriation or an allocation from the Fair and Exposition Fund, insofar as they relate to revenues and expenditures for fair or exposition purposes, may be audited by the Department of Finance.

When any county or citrus fruit fair or exposition receiving an appropriation or allocation from the Fair and Exposition Fund contracts with an association to conduct such fair or exposition, the contract shall include a provision that the books and records of such association shall be subject to audit by the Department of Finance at the discretion of the department.

SEC. 25. Section 5007 is added to the Public Resources Code, to read:

5007. (a) The department shall achieve any required budget reductions by closing, partially closing, and reducing services at selected units of the state park system. For purposes of this section, “required budget reductions” means the amount of funds appropriated in the annual Budget Act to the department that is less than the amount necessary to fully operate the 2010 level of 278 units of the state park system. The department shall select the units to be closed based solely on all of the following factors:

(1) The relative statewide significance of each park unit, preserving to the extent possible, parks identified in the department’s documents including “Outstanding and Representative Parks,” the “California State History Plan,” and the “California State Parks Survey of 1928.”

(2) The rate of visitation to each unit, to minimize impacts to visitation in the state park system.

(3) (A) The estimated net savings from closing each unit, to maximize savings to the state park system.

(B) For purposes of this subdivision, “net savings” means the estimated costs of operation for the unit less the unit’s projected revenues and less the costs of maintaining the unit after it is closed.

(4) The feasibility of physically closing each unit.

(5) The existence of, or potential for, partnerships that can help support each unit, including concessions and both for-profit and nonprofit partners.

(6) Significant operational efficiencies to be gained from closing a unit based on its proximity to other closed units where the units typically share staff and other operating resources.

(7) Significant and costly infrastructure deficiencies affecting key systems at each unit so that continued operation of the unit is less cost effective relative to other units.

(8) Recent or funded infrastructure investments at a unit.

(9) Necessary but unfunded capital investments at a unit.

(10) Deed restrictions and grant requirements applicable to each unit.

(11) The extent to which there are substantial dedicated funds for the support of the unit that are not appropriated from the General Fund.

(b) Notwithstanding Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, a public entity or a public employee is not liable for injury or damage caused by a condition of public property located in, or injury or damage otherwise occurring in, or arising out of an activity in, a state park system unit that is designated as closed, partially closed, or subject to service reduction by the department pursuant to subdivision (a). This immunity shall apply notwithstanding the fact that the public has access, whether invited or uninvited, to the state park system unit, and notwithstanding that the department may take actions such as patrols, inspections, maintenance, and repairs necessary to protect the state park system unit facilities and resources from deterioration, damage, or destruction. The immunity provided by this subdivision does not limit any other immunity or immunities available to a public entity or a public employee.

SEC. 26. Section 326 is added to the Public Utilities Code, to read:

326. (a) By January 10, 2012, and by January 10 of each year thereafter, the commission shall report to the Joint Legislative Budget Committee and appropriate fiscal and policy committees of the Legislature, on all sources and amounts of funding and actual and proposed expenditures, both in the two prior fiscal years and for the proposed fiscal year, including any costs to ratepayers, related to interactions by the commission, its officers, or its staff with the California Public Utilities Commission Foundation, or any derivative, or successor, or with any agent or director of the foundation, including all of the following:

(1) Attendance at meetings, conferences, or events organized or sponsored by the foundation.

(2) Any contract or other agreement between the commission, its officers, or its staff and the foundation, including agreements relating to attendance at any educational or training conference or event.

(3) Any agenda item, order, decision, resolution, or motion, referencing the foundation.

(4) Endorsements of the foundation or its activities.

(5) Any contribution made to the foundation at the behest of a member of the commission, its officers, or its staff, and any direct or indirect contribution made to the foundation by a member of the commission, its officers, or its staff. For purposes of this paragraph, “contribution” means any payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, except to the extent that full and adequate consideration is received.

(b) (1) Within eight weeks of any contribution to the foundation made at the behest of a member of the commission, its officers, or its staff, the commission shall report the contribution to the Joint Legislative Budget Committee and appropriate fiscal and policy committees of the Legislature, and include any documents pertaining to the contribution.

(2) Each report shall include certification from the commission that the contribution does not violate the Conflict of Interest Code and Statement of Incompatible Activities adopted pursuant to Section 303.

SEC. 27. Section 8352.6 of the Revenue and Taxation Code is amended to read:

8352.6. (a) (1) Subject to Section 8352.1, on the first day of every month, there shall be transferred from moneys deposited to the credit of the Motor Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund created by Section 38225 of the Vehicle Code an amount attributable to taxes imposed upon distributions of motor vehicle fuel used in the operation of motor vehicles off highway and for which a refund has not been claimed. Transfers made pursuant to this section shall be made prior to transfers pursuant to Section 8352.2.

(2) The Controller shall withhold eight hundred thirty-three thousand dollars (\$833,000) from this monthly transfer, and transfer that amount to the General Fund.

(b) The amount transferred pursuant to paragraph (1) of subdivision (a), as a percentage of the Motor Vehicle Fuel Account, shall be equal to the percentage transferred in the 2006–07 fiscal year. Every five years, starting in the 2013–14 fiscal year, the percentage transferred may be adjusted by the Department of Transportation in cooperation with the Department of Parks and Recreation and the Department of Motor Vehicles. Adjustments shall be based on, but not limited to, the changes in the following factors since the 2006–07 fiscal year or the last adjustment, whichever is more recent:

(1) The number of vehicles registered as off-highway motor vehicles as required by Division 16.5 (commencing with Section 38000) of the Vehicle Code.

(2) The number of registered street-legal vehicles that are anticipated to be used off highway, including four-wheel drive vehicles, all-wheel drive vehicles, and dual-sport motorcycles.

(3) Attendance at the state vehicular recreation areas.

(4) Off-highway recreation use on federal lands as indicated by the United States Forest Service's National Visitor Use Monitoring and the United States Bureau of Land Management's Recreation Management Information System.

(c) It is the intent of the Legislature that transfers from the Motor Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund should reflect the full range of motorized vehicle use off highway for both motorized recreation and motorized off-road access to other recreation opportunities. Therefore, the Legislature finds that the fuel tax baseline established in subdivision (b), attributable to off-highway estimates of use as of the 2006–07 fiscal year, accounts for the three categories of vehicles that have been found over the years to be users of fuel for off-highway motorized recreation or motorized access to nonmotorized recreational pursuits. These three categories are registered off-highway motorized vehicles, registered street-legal motorized vehicles used off highway, and unregistered off-highway motorized vehicles.

(d) It is the intent of the Legislature that the off-highway motor vehicle recreational use to be determined by the Department of Transportation pursuant to paragraph (2) of subdivision (b) be that usage by vehicles subject to registration under Division 3 (commencing with Section 4000) of the Vehicle Code, for recreation or the pursuit of recreation on surfaces where the use of vehicles registered under Division 16.5 (commencing with Section 38000) of the Vehicle Code may occur.

SEC. 28. Section 13260 of the Water Code is amended to read:

13260. (a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:

(1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(2) A person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.

(3) A person operating, or proposing to construct, an injection well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Each person subject to subdivision (a) shall file with the appropriate regional board a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d) (1) (A) Each person who is subject to subdivision (a) or (c) shall submit an annual fee according to a fee schedule established by the state board.

(B) The total amount of annual fees collected pursuant to this section shall equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waste discharge requirements and waivers of waste discharge requirements.

(C) Recoverable costs may include, but are not limited to, costs incurred in reviewing waste discharge reports, prescribing terms of waste discharge requirements and monitoring requirements, enforcing and evaluating compliance with waste discharge requirements and waiver requirements, conducting surface water and groundwater monitoring and modeling, analyzing laboratory samples, adopting, reviewing, and revising water quality control plans and state policies for water quality control, and reviewing documents prepared for the purpose of regulating the discharge of waste, and administrative costs incurred in connection with carrying out these actions.

(D) In establishing the amount of a fee that may be imposed on a confined animal feeding and holding operation pursuant to this section, including, but not limited to, a dairy farm, the state board shall consider all of the following factors:

- (i) The size of the operation.
- (ii) Whether the operation has been issued a permit to operate pursuant to Section 1342 of Title 33 of the United States Code.
- (iii) Any applicable waste discharge requirement or conditional waiver of a waste discharge requirement.
- (iv) The type and amount of discharge from the operation.
- (v) The pricing mechanism of the commodity produced.
- (vi) Any compliance costs borne by the operation pursuant to state and federal water quality regulations.
- (vii) Whether the operation participates in a quality assurance program certified by a regional water quality control board, the state board, or a federal water quality control agency.

(2) (A) Subject to subparagraph (B), the fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund, which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, solely for the purposes of carrying out this division.

(B) (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.

(ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in the region.

(iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs.

(3) A person who would be required to pay the annual fee prescribed by paragraph (1) for waste discharge requirements applicable to discharges of solid waste, as defined in Section 40191 of the Public Resources Code, at a waste management unit that is also regulated under Division 30 (commencing with Section 40000) of the Public Resources Code, shall be entitled to a waiver of the annual fee for the discharge of solid waste at the waste management unit imposed by paragraph (1) upon verification by the state board of payment of the fee imposed by Section 48000 of the Public Resources Code, and provided that the fee established pursuant to Section 48000 of the Public Resources Code generates revenues sufficient to fund the programs specified in Section 48004 of the Public Resources Code and the amount appropriated by the Legislature for those purposes is not reduced.

(e) Each person that discharges waste in a manner regulated by this section shall pay an annual fee to the state board. The state board shall establish, by regulation, a timetable for the payment of the annual fee. If the state board or a regional board determines that the discharge will not affect, or have the potential to affect, the quality of the waters of the state, all or part of the annual fee shall be refunded.

(f) (1) The state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivision (d). The total revenue collected each year through annual fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual fees each fiscal year to conform with the revenue levels set forth in the Budget Act for this activity. If the state board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the Budget Act, the state board may further adjust the annual fees to compensate for the over and under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, any amendment thereto, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to, or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the national pollutant discharge elimination system until the time when those fees are again due, at which time the fees shall become due on an annual basis.

(j) A person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a) shall not be required to pay a fee pursuant to subdivision (d) if the injection well is regulated by the Division of Oil and Gas of the Department of Conservation, in lieu of the appropriate California regional water quality control board, pursuant to the memorandum of understanding, entered into between the state board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the state board or the Department of Conservation.

(k) In addition to the report required by subdivision (a), before a person discharges mining waste, the person shall first submit both of the following to the regional board:

(1) A report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination. The report shall include the results of all tests required by regulations adopted by the board, any test adopted by the Department of Toxic Substances Control pursuant to Section 25141 of the Health and Safety Code for extractable, persistent, and bioaccumulative toxic substances in a waste or other material, and any other tests that the state board or regional board may require, including, but not limited to, tests needed to determine the acid-generating potential of the mining waste or the extent to which hazardous substances may persist in the waste after disposal.

(2) A report that evaluates the potential of the discharge of the mining waste to produce, over the long term, acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

(l) Except upon the written request of the regional board, a report of waste discharge need not be filed pursuant to subdivision (a) or (c) by a user of recycled water that is being supplied by a supplier or distributor of recycled water for whom a master recycling permit has been issued pursuant to Section 13523.1.

SEC. 29. Section 27 of Chapter 718 of the Statutes of 2010 is amended to read:

Sec. 27. (a) It is the intent of the Legislature that a zero-based budget for programs and expenditures related to water and ecosystem restoration activities in the Sacramento-San Joaquin Delta will enable the Legislature to better understand the overall size of the state's investment in the

Sacramento-San Joaquin Delta and how funds are being allocated and prioritized for particular programs and functions.

(b) (1) On or before April 1, 2012, the Governor shall submit to the Legislature a report on the budget for the 2012–13 fiscal year for all state agency programs that implement water and ecosystem restoration activities in the Sacramento-San Joaquin Delta, including activities related to the CALFED Bay-Delta Program, using a zero-based budget methodology.

(2) The budget submitted pursuant to this subdivision shall complement the budget display for the CALFED Bay-Delta Program budget annually submitted by the Governor in conjunction with the budget, and shall show all state agency expenditures that implement water and ecosystem restoration activities in the Sacramento-San Joaquin Delta. All state expenditures reported in the budget for the CALFED Bay-Delta Program for the 2012–13 fiscal year shall be reported using a zero-based budget methodology, regardless of whether the appropriation authority is continuous or on an annual basis.

(3) In developing a zero-based budget for the CALFED Bay-Delta Program, the Delta Stewardship Council shall conduct a programmatic review of CALFED Bay-Delta Program expenditures for consistency with the Delta Plan developed pursuant to Section 85300 of the Water Code.

(c) As used in the section, “zero-based budget methodology” means determining a budget by starting with a base of zero dollars (\$0) and adding dollar amounts necessary to conduct specific activities and operations. A zero-based budget shall set forth all of the following:

(1) Each activity performed for which an appropriation is made or is requested.

(2) The legal basis for performing the activity.

(3) An itemized justification for the amount requested to perform the activity.

SEC. 30. There is hereby appropriated one thousand dollars (\$1,000) from the State Parks and Recreation Fund to the Department of Parks and Recreation for administrative costs.

SEC. 31. This act addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation on January 20, 2011, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 32. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.