

AMENDED IN SENATE JUNE 13, 2011

AMENDED IN ASSEMBLY APRIL 13, 2011

AMENDED IN ASSEMBLY MARCH 17, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 964**

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**Introduced by Assembly Member Huffman**

February 18, 2011

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~~An act to add Section 13481.6 to the Water Code, relating to water pollution.~~ *An act to amend Sections 1228.1, 1228.2, and 1228.5 of, to amend the heading of Article 2.7 (commencing with Section 1228) of Chapter 1 of Part 2 of Division 2 of, to amend and renumber Section 1229.1 of, and to repeal Section 1228.9 of, the Water Code, relating to water.*

LEGISLATIVE COUNSEL'S DIGEST

AB 964, as amended, Huffman. ~~State Water Pollution Control Revolving Fund: onsite sewer improvement projects.~~ *Water rights: appropriation.*

*(1) Existing law authorizes any person to obtain a right to appropriate water for small domestic use or livestock stockpond use upon registering the use with the State Water Resources Control Board and upon thereafter applying the water to reasonable and beneficial use with due diligence. With regard to small domestic use, existing law prohibits more than one registration to be in effect at any time for any facility. Existing law allows a registrant to maintain more than one registration for livestock stockpond use if stockponds subject to registration do not exceed the ratio of one per 50 acres. Existing law provides for registration renewals of small domestic uses and livestock*

*stockpond uses prior to the expiration of each 5-year period following completed registration.*

*This bill would also authorize any person to obtain a right to appropriate water for a small irrigation use, as defined, upon registering the use with the board, as prescribed, and thereafter applying the water to reasonable and beneficial use with due diligence. This bill would prohibit the filing of a small domestic use registration for a facility served by or used pursuant to a permit or license for domestic or municipal use. This bill would also allow a registrant for a small irrigation use to maintain more than one registration if a small irrigation use subject to registration does not exceed the ratio of one per 50 acres, and if the total water use on all registered acreage does not exceed 100 acre-feet per annum.*

*This bill would also prohibit a registration with a source of supply on a stream system from taking effect unless the board finds that unappropriated water is available for the proposed appropriation. The bill would authorize the board, following a notice and hearing, to determine whether that stream system should be declared fully appropriated.*

*(2) Existing law exempts from the provisions described in (1) those stream segments for which the Director of Fish and Game establishes proposed streamflow requirements pursuant to specified existing law.*

*This bill would provide that the exemption does not apply to a registration filed before the director establishes proposed streamflow requirements. The bill would require the renewal of a registration to include certain conditions determined by the department to be necessary.*

~~Existing law continuously appropriates state and federal funds in the State Water Pollution Control Revolving Fund to the State Water Resources Control Board to provide financial assistance for the construction of publicly owned treatment works by a municipality, the implementation of a specified management program, the development and implementation of a specified conservation and management plan, and other related purposes in accordance with the federal Clean Water Act and the state Porter-Cologne Water Quality Control Act.~~

~~This bill would require financial assistance provided from the fund for onsite sewer improvements, as defined, to be provided only for projects for which a public agency has adopted a sewer system management plan, as defined, that includes a prescribed 10-year plan for sewer upgrades. The bill, commencing January 1, 2013, would require a public agency receiving financial assistance from the fund for~~

that purpose to report annually to the board on its progress with respect to developing and implementing a 10-year plan for sewer upgrades.

The bill also would make legislative findings and declarations related to water quality and financing onsite sewer system improvements.

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. *The heading of Article 2.7 (commencing with*  
2 *Section 1228) of Chapter 1 of Part 2 of Division 2 of the Water*  
3 *Code is amended to read:*

4  
5     Article 2.7. Registration of Appropriations for Small Domestic,  
6         *Small Irrigation, and Livestock Stockpond Uses*  
7

8     SEC. 2. *Section 1228.1 of the Water Code is amended to read:*

9     1228.1. (a) The Legislature finds and declares that it is in the  
10 public interest to provide a timely, efficient, and economic  
11 procedure for the acquisition of rights to appropriate water for a  
12 small domestic use, including incidental ~~stockwatering~~ *stock*  
13 *watering* and irrigation uses, *a small irrigation use*, and for  
14 livestock stockponds subject to prior rights.

15     (b) As used in this article, ~~“small”~~:

16     (1) *“Small” domestic use* means a domestic use, not to exceed  
17 direct diversion of 4500 gallons per day or diversion ~~by~~ *to* storage  
18 of 10 acre-feet per annum, as that use is defined by board rule, and  
19 shall include impoundment for incidental aesthetic, recreational,  
20 or fish and wildlife purposes.

21     (2) *“Small irrigation use” means an irrigation use not to exceed*  
22 *direct diversion of 4500 gallons per day or diversion to storage*  
23 *of 20 acre-feet per annum.*

24     (e)

25     (3) ~~As used in this article, “livestock”~~ *“Livestock stockpond”*  
26 means a water impoundment structure constructed for livestock  
27 watering use not to exceed direct diversion of 4500 gallons per  
28 day, or diversion ~~by~~ *to* storage of 10 acre-feet per year, as that use  
29 is defined by the board, and including impoundment for incidental  
30 aesthetic, recreational, or fish and wildlife purposes.

31     SEC. 3. *Section 1228.2 of the Water Code is amended to read:*

1 1228.2. (a) (1) Subject to subdivision (b), any person may  
2 obtain a right to appropriate water for a small domestic, *small*  
3 *irrigation*, or livestock stockpond use upon first registering the  
4 use with the board and thereafter applying the water to reasonable  
5 and beneficial use with due diligence.

6 (2) With regard to an appropriation for small domestic use, *a*  
7 *registration shall not be filed for a facility served by or used*  
8 *pursuant to a permit or license for domestic or municipal use, and*  
9 not more than one registration shall be in effect at any time for  
10 any facility.

11 (3) *With regard to an appropriation for small irrigation use,*  
12 *more than one registration may be in effect at any time for a*  
13 *registrant if the diversion or storage facilities subject to*  
14 *registration for a registrant do not exceed the ratio of one per 50*  
15 *acres, and if the total water use on all acreage covered by the*  
16 *registrations, including any water use based on other rights, does*  
17 *not exceed 100 acre-feet per annum.*

18 ~~(3)~~

19 (4) With regard to an appropriation for livestock stockpond use,  
20 more than one registration may be in effect at any time for a  
21 registrant if stockponds subject to registration for that registrant  
22 do not exceed the ratio of one per 50 acres.

23 (b) Initiation of rights to appropriate water pursuant to this article  
24 shall be subject to Article 1.3 (commencing with Section 1205),  
25 relating to fully appropriated stream systems. The board shall not  
26 accept any registration of water use which proposes as a source of  
27 water supply any stream system which has been unconditionally  
28 declared by the board to be fully appropriated pursuant to Section  
29 1205, except that subdivision (b) of Section 1206, relating to  
30 conditional declarations of fully appropriated stream systems, shall  
31 apply to registration of water use pursuant to this article, and the  
32 board shall accept those registrations where consistent with the  
33 conditions specified in any such declaration.

34 (c) On or before June 30, 1989, and annually thereafter, the  
35 Division of Water Rights shall prepare and submit to the board a  
36 report summarizing the location, nature, and amount of water  
37 appropriated pursuant to this article. The report shall include a  
38 description of the availability of unappropriated water in those  
39 stream systems which may become fully appropriated within the  
40 next reporting period.

1 (d) ~~Whenever it can be reasonably anticipated that~~ *If a*  
2 *registration is filed with a source of supply on a stream system*  
3 *that the most recent report submitted under subdivision (c)*  
4 *identifies as a stream system that may become fully appropriated*  
5 *within the next reporting period, the registration shall not take*  
6 *effect unless the board finds that unappropriated water is available*  
7 *for the appropriation proposed by the registration. If the board*  
8 *finds that unappropriated water is not available to supply the*  
9 *proposed appropriation, the board shall, following notice and*  
10 *hearing, determine whether that stream system should be declared*  
11 *fully appropriated pursuant to Article 1.3 (commencing with*  
12 *Section 1205).*

13 *SEC. 4. Section 1228.5 of the Water Code is amended to read:*

14 1228.5. (a) Registration of a small domestic, *small irrigation,*  
15 *or livestock stockpond use pursuant to this article shall be renewed*  
16 *prior to the expiration of each five-year period following completed*  
17 *registration.*

18 (b) Renewal of registration shall be made upon a form prescribed  
19 by the board and shall contain a report of water use made pursuant  
20 to the registration as may be required by the board.

21 (c) The conditions established by the board pursuant to Section  
22 1228.6 that are in effect at the time of renewal of registration shall  
23 supersede the conditions that were applicable to the original  
24 completed registration.

25 (d) Failure to renew registration in substantial compliance with  
26 the reporting requirements prescribed by the board within the time  
27 period specified in subdivision (a), or to pay the renewal fee  
28 specified in Section 1525, shall result by operation of law in the  
29 revocation of any right acquired pursuant to this article.

30 *SEC. 5. Section 1228.9 of the Water Code is repealed.*

31 ~~1228.9. With regard to a small domestic use of water, no right~~  
32 ~~to appropriate or use water subject to appropriation may be initiated~~  
33 ~~on and after January 1, 1989, except upon compliance with this~~  
34 ~~article, and this article shall be the exclusive means of acquiring~~  
35 ~~and maintaining that right. Nothing in this article shall be construed~~  
36 ~~as affecting any right initiated or acquired pursuant to permit or~~  
37 ~~evidenced by license, and including any application filed but not~~  
38 ~~permitted, prior to January 1, 1989.~~

39 *SEC. 6. Section 1229.1 of the Water Code is amended and*  
40 *renumbered to read:*

1 ~~1229.1.—This~~

2 ~~1229. (a) Except as provided in subdivision (b), this article~~  
3 ~~does not apply to those stream segments for which the Director of~~  
4 ~~Fish and Game establishes proposed streamflow requirements~~  
5 ~~pursuant to Section 10002 of the Public Resources Code,~~  
6 ~~notwithstanding the July 1, 1989, deadline for preparation of the~~  
7 ~~requirements.~~

8 ~~(b) Notwithstanding subdivision (a), this article applies to any~~  
9 ~~registration filed before the Director of Fish and Game establishes~~  
10 ~~proposed streamflow requirements for the source of water supply~~  
11 ~~for the registration. The conditions for renewal under subdivision~~  
12 ~~(c) of Section 1228.5 may include any conditions the Department~~  
13 ~~of Fish and Game determines to be necessary to protect~~  
14 ~~stream-related fish and wildlife resources on any source of water~~  
15 ~~supply for which the Director of Fish and Game has established~~  
16 ~~proposed streamflow requirements pursuant to Section 10002 of~~  
17 ~~the Public Resources Code.~~

18 ~~SECTION 1.—The Legislature finds and declares all of the~~  
19 ~~following:~~

20 ~~(a) The frequency and size of sewage spills of raw or partially~~  
21 ~~treated sewage is often a result of aging sewer systems and a lack~~  
22 ~~of maintenance on leaky and dilapidated infrastructure.~~

23 ~~(b) Sewage spills also occur due to rainstorms infiltrating and~~  
24 ~~overcoming poorly maintained or outdated systems.~~

25 ~~(c) Sewage spills cause significant economic damage; they cause~~  
26 ~~fishery closures, hurt the tourism industry, create unsafe swimming~~  
27 ~~conditions, result in closed beaches, and cost ratepayers millions~~  
28 ~~of dollars annually to abate and clean up.~~

29 ~~(d) Sewage spills result in significant contamination of the~~  
30 ~~environment. The state's waterways are part of critically important~~  
31 ~~ecosystems that support large numbers of birds, fish, and other~~  
32 ~~wildlife, including, but not limited to, many threatened and~~  
33 ~~endangered species. Sewage contamination threatens these~~  
34 ~~ecosystems when it escapes public sewer systems.~~

35 ~~(e) Public agencies are often challenged with the high cost of~~  
36 ~~maintenance and repair of sewer lines, and often have limited~~  
37 ~~authority over private sewer lines that feed into public sewer~~  
38 ~~systems.~~

39 ~~(f) Sewage from improperly designed, located, constructed, or~~  
40 ~~maintained septic systems can leak bacteria, viruses, household~~

1 chemicals, and other contaminants causing or contributing to  
2 serious water quality problems.

3 ~~(g) Waiting until properties change ownership does not address~~  
4 ~~in a timely manner the need to rehabilitate aged and leaking private~~  
5 ~~sewer laterals or needed conversions from septic systems to the~~  
6 ~~public sewer system.~~

7 ~~(h) Establishment of a 10-year plan to maintain and improve~~  
8 ~~public and private sewer infrastructure will help protect surface~~  
9 ~~water and groundwater, including preventing sewage spills caused~~  
10 ~~by stormwater intrusion into sewer collection systems.~~

11 SEC. 2. Section 13481.6 is added to the Water Code, to read:

12 13481.6. ~~(a) The Legislature finds and declares all of the~~  
13 ~~following:~~

14 ~~(1) It is the intent of the Legislature to address water quality~~  
15 ~~needs throughout California by permitting voluntary individual~~  
16 ~~sewer improvements that provide a public benefit. The Legislature~~  
17 ~~further intends that this chapter should be used to finance the~~  
18 ~~installation of onsite sewer improvements that are permanently~~  
19 ~~fixed to residential, commercial, industrial, agricultural, or other~~  
20 ~~real property, including installation of improvements to, and~~  
21 ~~replacements of, existing onsite sewer facilities served by a~~  
22 ~~community sewer system or a septic conversion.~~

23 ~~(2) To improve the quality of surface water and groundwater,~~  
24 ~~necessary efforts include the promotion of onsite sewer~~  
25 ~~improvements that provide a public benefit in preventing water~~  
26 ~~quality degradation.~~

27 ~~(3) The upfront cost of making needed improvements to, or~~  
28 ~~replacements of, existing sewer laterals, or septic conversion,~~  
29 ~~prevents many property owners from making those improvements.~~  
30 ~~To make those improvements more affordable and to promote the~~  
31 ~~installation of those improvements, it is necessary for the board~~  
32 ~~to give favorable consideration to an alternative procedure to~~  
33 ~~finance the cost of onsite sewer improvements.~~

34 ~~(4) A public purpose will be served by a locally administered~~  
35 ~~low-cost loan program that provides the legislative body of a public~~  
36 ~~agency with the authority to finance the installation of onsite sewer~~  
37 ~~improvements that are permanently fixed to residential,~~  
38 ~~commercial, industrial, agricultural, or other real property.~~

39 ~~(b) For purposes of this section, the following terms have the~~  
40 ~~following meanings:~~

1     ~~(1) “Onsite sewer improvements” means permanent sewer~~  
 2 ~~improvements fixed to real property that convey sewage from the~~  
 3 ~~property’s interior plumbing to the point of discharge into the~~  
 4 ~~public agency’s sewer facilities, and may include, but is not limited~~  
 5 ~~to, pipes, pumps, other equipment, sewer laterals, or one-time~~  
 6 ~~charges for sewage treatment capacity associated with the~~  
 7 ~~improvements. Onsite sewer improvements may be installed to~~  
 8 ~~modify or replace existing onsite sewer improvements. “Onsite~~  
 9 ~~sewer improvements” may include, if appropriate, septic~~  
 10 ~~conversions.~~

11     ~~(2) “Public agency” means a city, county, city and county,~~  
 12 ~~municipal utility district, community services district, sanitary~~  
 13 ~~district, sanitation district, or water district as defined in Section~~  
 14 ~~20200.~~

15     ~~(3) “Septic conversion” means the conversion of a residential,~~  
 16 ~~commercial, industrial, agricultural, or other real property from~~  
 17 ~~an onsite septic system to a community sewer collection service,~~  
 18 ~~and may include related septic system abandonment.~~

19     ~~(4) “Sewer system management plan” is a system-specific plan~~  
 20 ~~that meets the requirements of the Statewide General Waste~~  
 21 ~~Discharge Requirements for Sanitary Sewer Systems (Order No.~~  
 22 ~~2006-0003-DWQ of the State Water Resources Control Board),~~  
 23 ~~as that order may be amended.~~

24     ~~(5) “Ten-year plan for sewer upgrades” means a plan that~~  
 25 ~~includes, but need not be limited to, all of the following:~~

26     ~~(A) An evaluation that identifies and prioritizes the areas where~~  
 27 ~~onsite sewer improvements are needed in order to prevent, within~~  
 28 ~~10 years, sanitary sewer overflows due to aging, cracked, and~~  
 29 ~~leaking sewer laterals. If a public agency intends to provide~~  
 30 ~~financial assistance for septic conversions, the evaluation shall~~  
 31 ~~also identify and prioritize areas where septic conversions are~~  
 32 ~~needed to protect surface water or groundwater.~~

33     ~~(B) Strategies for public outreach to private property owners~~  
 34 ~~regarding the critical importance of properly designed, located,~~  
 35 ~~constructed, and maintained onsite sewer improvements for the~~  
 36 ~~purpose of prevention or abatement of sewage contamination.~~  
 37 ~~Outreach shall include, but shall not be limited to, providing~~  
 38 ~~information about financing options for owners who wish to make~~  
 39 ~~repairs to, or replace, as necessary, private sewer laterals. If the~~  
 40 ~~local agency has identified in its 10-year plan where septic~~

1 conversions are needed, outreach shall also include information  
2 regarding financing options for septic conversions. If the public  
3 agency has received financial assistance from the fund, outreach  
4 information shall address the possibility of low-cost loans between  
5 the property owners and the agency.

6 (C) Guidelines for managing and accounting for funding made  
7 available to property owners for the purposes of onsite sewer  
8 improvements. The guidelines may authorize the property owner  
9 to purchase directly the related equipment and materials for the  
10 installation of onsite sewer improvements and to contract directly  
11 for the installation of onsite sewer improvements that are  
12 permanently fixed to the property owner's residential, commercial,  
13 industrial, agricultural, or other real property.

14 (e) Financial assistance provided from the fund for purposes of  
15 onsite sewer improvements shall be provided only for projects for  
16 which a public agency has adopted a sewer system management  
17 plan that, in addition to other applicable requirements, includes a  
18 10-year plan for sewer upgrades.

19 (d) Commencing January 1, 2013, a public agency receiving  
20 financial assistance in accordance with subdivision (c) shall report  
21 annually to the board on the progress of developing and  
22 implementing the 10-year plan for sewer upgrades.

O