

**ASSEMBLY BILL**

**No. 1**

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**Introduced by Assembly Member Alejo**

December 3, 2012

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An act to amend Section 13350 of the Water Code, relating to water quality, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1, as introduced, Alejo. Water quality: integrated plan: Salinas Valley.

Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act (state act). The state act imposes various penalties for a violation of its requirements. The state act requires specified penalties be deposited into the Waste Discharge Permit Fund and separately accounted. The state act requires moneys in the fund, upon appropriation by the Legislature, to be expended by the state board to assist regional boards and prescribed other public agencies in cleaning up or abating the effects of waste on waters of the state or to assist a regional board attempting to remedy a significant unforeseen water pollution problem.

This bill would appropriate \$2,000,000 to the state board for use by the Greater Monterey County Regional Water Management Group (management group) to develop an integrated plan to address the drinking water and wastewater needs of disadvantaged communities in the Salinas Valley whose waters have been affected by waste discharges, thereby making an appropriation. The bill would require the management

group to consult with specified entities and to submit to the Legislature by January 1, 2016, the plan developed by the group.

This bill would make legislative findings and declarations as to the necessity of a special statute for Monterey County.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 13350 of the Water Code is amended to  
2 read:

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

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

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

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

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

4 (1) An act of war.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (k) Notwithstanding any other law, all funds generated by the  
32 imposition of liabilities pursuant to this section shall be deposited  
33 into the Waste Discharge Permit Fund. These moneys shall be  
34 separately accounted for, and shall be expended by the state board,  
35 upon appropriation by the Legislature, to assist regional boards,  
36 and other public agencies with authority to clean up waste or abate  
37 the effects of the waste, in cleaning up or abating the effects of the  
38 waste on waters of the state, or for the purposes authorized in  
39 Section 13443, or to assist in implementing Chapter 7.3  
40 (commencing with Section 13560).

1     *(l) (1) The Legislature hereby appropriates to the state board*  
2 *two million dollars (\$2,000,000) from the moneys deposited into,*  
3 *and separately accounted for in, the Waste Discharge Permit Fund*  
4 *pursuant to subdivision (c) of Section 13264, subdivision (f) of*  
5 *Section 13268, subdivision (k) of this section, and subdivision (n)*  
6 *of Section 13385 for use by the Greater Monterey County Regional*  
7 *Water Management Group to develop an integrated plan to address*  
8 *the drinking water and wastewater needs of disadvantaged*  
9 *communities in the Salinas Valley whose waters have been affected*  
10 *by waste discharges.*

11     *(2) Funds appropriated pursuant to paragraph (1) shall be*  
12 *available for assessment and feasibility studies necessary to*  
13 *develop the plan.*

14     *(3) The Greater Monterey County Regional Water Management*  
15 *Group shall develop the plan in consultation with appropriate*  
16 *stakeholders, including the state board, the State Department of*  
17 *Public Health, and representatives of disadvantaged communities.*

18     *(4) The plan shall include identification of disadvantaged*  
19 *communities without safe drinking water and recommendations*  
20 *for planning, infrastructure, and other water management actions*  
21 *that achieve affordable, sustainable solutions for disadvantaged*  
22 *communities, including communities without public water systems.*

23     *(5) On or before January 1, 2016, the Greater Monterey County*  
24 *Regional Water Management Group shall submit to the Legislature*  
25 *the plan developed pursuant to this subdivision.*

26     *(6) (A) The requirement for submitting a plan imposed under*  
27 *paragraph (5) is inoperative on January 1, 2020, pursuant to*  
28 *Section 10231.5 of the Government Code.*

29     *(B) A plan to be submitted pursuant to paragraph (5) shall be*  
30 *submitted in compliance with Section 9795 of the Government*  
31 *Code.*

32     SEC. 2. The Legislature finds and declares that a special law  
33 is necessary and that a general law cannot be made applicable  
34 within the meaning of Section 16 of Article IV of the California  
35 Constitution because of the unique needs for water faced by  
36 disadvantaged communities in the Salinas Valley whose waters  
37 have been affected by waste discharges.

38     SEC. 3. This act is an urgency statute necessary for the  
39 immediate preservation of the public peace, health, or safety within

1 the meaning of Article IV of the Constitution and shall go into  
2 immediate effect. The facts constituting the necessity are:  
3 In order to provide funds to develop the integrated plan to address  
4 the drinking water and wastewater needs of disadvantaged  
5 communities in the Salinas Valley at the earliest possible moment,  
6 it is necessary that this act take effect immediately.

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