

AMENDED IN SENATE AUGUST 12, 2013

AMENDED IN SENATE JULY 11, 2013

AMENDED IN SENATE JUNE 27, 2013

AMENDED IN SENATE JUNE 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 69**

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**Introduced by Assembly Member Perea  
(Coauthor: Assembly Member Stone)**

January 10, 2013

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An act to add ~~Section 13169.5 to Article 6.5 (commencing with Section 14615) to Chapter 5 of Division 7 of the Food and Agricultural Code, and to add and repeal Article 4 (commencing with Section 13444) of Chapter 6 of Division 7 of, the Water Code Chapter 4.7 (commencing with Section 116765) of Part 12 of Division 104 of the Health and Safety Code, relating to drinking water, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 69, as amended, Perea. Groundwater: drinking water: Nitrate at Risk Fund.

~~(1) Existing law establishes the State Water Resources Control Board, or state board, and 9 California regional water quality control boards, and authorizes the state board to adopt regulations to carry out its powers and duties. Under existing law, the Porter-Cologne Water Quality Control Act, the state board is required to formulate and adopt state policy for water quality control. Under existing law the state board is~~

further authorized to develop and implement a groundwater protection program consistent with federal law.

~~This bill would require the state board, in collaboration with the regional boards, and state and local agencies that collect water quality data or information, to develop a public information program on matters involving groundwater quality monitoring and assessment, as specified, and would also require the state board to develop and maintain on its Internet Web site, in a format accessible to the general public, an information file with specific information on groundwater quality.~~

~~(2)~~

~~(1) Existing law, the California Safe Drinking Water Act, requires the State Department of Public Health to administer provisions relating to the regulation of drinking water to protect public health, including, but not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, adopting enforcement regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies.~~

~~This bill would establish the Nitrate at Risk Fund, to be administered by the department. This bill would continuously appropriate, without regard to fiscal years, the fund to the department for the purposes of loans, principal forgiveness loans, or grants to certain water systems operating in a high-nitrate at-risk area for specified purposes. This bill would require a person who purchases nitrogen fertilizer materials in California to pay a nitrogen fertilizer materials charge, until January 1, 2016, of \$0.01 per dollar of materials, and on and after January 1, 2016, the department may increase the amount of the charge, as specified, to an amount no greater than \$0.04 per dollar of materials if 80% of the moneys in the fund are committed. This bill would require a seller of nitrogen fertilizer materials to remit the nitrogen fertilizer materials charge to the department to be deposited in the fund. This bill would require the state board, on or before January 1, 2022, to submit a report to the Legislature that includes specified information relating to the fund and contaminated drinking water. This bill would repeal these provisions on January 1, 2024.~~

~~(2) Existing law requires every person who manufactures or distributes fertilizing materials to be licensed by the Secretary of Food and Agriculture and to pay a license fee that does not exceed \$300. Existing law requires every lot, parcel, or package of fertilizing material to have a label attached to it, as required by the secretary. Existing law~~

*requires a licensee who sells or distributes bulk fertilizing materials to pay to the secretary an assessment not to exceed \$0.002 per dollar of sales for all sales of fertilizing materials, as prescribed, for the purposes of the administration and enforcement of provisions relating to fertilizing materials. In addition to that assessment, existing law authorizes the secretary to impose an assessment in an amount not to exceed \$0.001 per dollar of sales for all sales of fertilizing materials for the purpose of providing funding for research and education regarding the use of fertilizing materials.*

*This bill, with prescribed exceptions, would require a person who sells for use in this state fertilizer materials to pay to the secretary a fertilizer materials charge, until January 1, 2016, of \$0.01 per dollar of materials. This bill, on and after January 1, 2016, would permit the department to increase the amount of the charge, as specified, to an amount no greater than \$0.04 per dollar of materials if 80% of the moneys in the fund are committed, and would require the Fertilizer Inspection Advisory Board to discuss the charge and provide a recommendation to the department. This bill would prohibit the fertilizer materials charge from being imposed when the department determines that more than \$60,000,000 of the moneys in the fund are uncommitted. This bill would require a seller of fertilizer materials to remit the charge to the secretary to be deposited in the fund.*

(3) The bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . 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 13169.5 is added to the Water Code, to~~
- 2     ~~read:~~
- 3     ~~13169.5. (a) The state board, in collaboration with the regional~~
- 4     ~~boards, and state and local agencies that collect water quality data~~
- 5     ~~or information, shall develop a public information program on~~
- 6     ~~matters involving groundwater quality monitoring and assessment~~
- 7     ~~throughout the state by utilizing existing data, including~~
- 8     ~~groundwater ambient monitoring and assessment results, along~~
- 9     ~~with the collection of new information as needed.~~
- 10    ~~(b) The state board shall develop and maintain on its Internet~~
- 11    ~~Web site, in a format accessible to the general public, an~~

1 information file on groundwater quality monitoring, assessment,  
 2 research, standards, regulation, enforcement, and other pertinent  
 3 matters:

4 SEC. 2. ~~Article 4 (commencing with Section 13444) is added~~  
 5 ~~to Chapter 6 of Division 7 of the Water Code, to read:~~

6

7

~~Article 4. Nitrate at Risk Fund~~

8

9

10 ~~13444. The Nitrate at Risk Fund is hereby established in the~~  
 11 ~~State Treasury, to be administered by the State Department of~~  
 12 ~~Public Health. Notwithstanding Section 13340 of the Government~~  
 13 ~~Code, moneys in the Nitrate at Risk Fund are continuously~~  
 14 ~~appropriated, without regard to fiscal years, to the State Department~~  
 15 ~~of Public Health for the purposes described in Section 13446.~~

16

17 ~~13445. (a) For purposes of this section, “fertilizer materials~~  
 18 ~~charge” means the charge imposed pursuant to subdivision (b).~~

19

20 ~~(b) (1) A person who purchases fertilizer materials in California,~~  
 21 ~~including, but not limited to, all commercial or retail sales of~~  
 22 ~~fertilizer materials for agricultural or urban uses, shall pay a~~  
 23 ~~fertilizer materials charge as follows:~~

24

25 ~~(A) Until January 1, 2016, a charge of \$0.01 per dollar of~~  
 26 ~~materials:~~

27

28 ~~(B) On and after January 1, 2016, the State Department of Public~~  
 29 ~~Health may increase the amount of the charge to an amount no~~  
 30 ~~greater than \$0.04 per dollar of materials if 80 percent of the~~  
 31 ~~moneys in the Nitrate at Risk Fund are committed. In determining~~  
 32 ~~the amount of the charge, the State Department of Public Health~~  
 33 ~~shall consider the demand for the moneys in the Nitrate at Risk~~  
 34 ~~Fund. In determining the charge, the State Department of Public~~  
 35 ~~Health shall allow stakeholder participation and make available~~  
 36 ~~to the public the information upon which the State Department of~~  
 37 ~~Public Health calculates, bases, or determines the charge.~~

38

39 ~~(2) A seller of fertilizer materials shall remit the fertilizer~~  
 40 ~~materials charge to the State Department of Public Health to be~~  
 deposited in the Nitrate at Risk Fund.

41

42 ~~13446. (a) Moneys in the Nitrate at Risk Fund shall be used~~  
 43 ~~for loans, principal forgiveness loans, or grants to a water system~~  
 44 ~~operating in a high-nitrate at-risk area that is one of the following:~~

45

46 ~~(1) A small community water system serving a disadvantaged~~  
 47 ~~community.~~

1 ~~(2) An unregulated system of 2 to 15, inclusive, service~~  
2 ~~connections.~~

3 ~~(3) A nontransient noncommunity water system owned by a~~  
4 ~~public agency.~~

5 ~~(b) Moneys in the Nitrate at Risk Fund may be used for any of~~  
6 ~~the following purposes:~~

7 ~~(1) Preplanning drinking water projects.~~

8 ~~(2) Planning drinking water projects.~~

9 ~~(3) Interim water solutions.~~

10 ~~(4) Constructing drinking water projects.~~

11 ~~(5) Operating and maintaining drinking water systems. The~~  
12 ~~State Department of Public Health shall ensure that moneys used~~  
13 ~~for the purposes of this paragraph are for the operation and~~  
14 ~~maintenance of drinking water systems in communities that have~~  
15 ~~a substantial need and otherwise would not be able to afford to~~  
16 ~~operate or maintain their systems. The State Department of Public~~  
17 ~~Health shall ensure that moneys available for the operation and~~  
18 ~~maintenance of a particular drinking water system pursuant to this~~  
19 ~~paragraph shall not be permanent and shall be phased out over~~  
20 ~~time.~~

21 ~~(e) Moneys in the Nitrate at Risk Fund shall not be used for~~  
22 ~~loans, principal forgiveness loans, or grants to a water system that~~  
23 ~~is a small community water system for the purposes of either~~  
24 ~~paragraph (2) or (4) of subdivision (b) unless no other funding~~  
25 ~~source is available to that system for that purpose.~~

26 ~~13447. (a) On or before January 1, 2022, the state board, in~~  
27 ~~consultation with any other state entity or research institution as~~  
28 ~~appropriate, shall submit to the Legislature a report that includes~~  
29 ~~all of the following information:~~

30 ~~(1) Communities that rely on contaminated drinking water as a~~  
31 ~~primary source of drinking water.~~

32 ~~(2) The principal contaminants and other constituents of concern~~  
33 ~~affecting groundwater and contamination levels in the groundwater~~  
34 ~~sources for the communities described in paragraph (1).~~

35 ~~(3) Potential solutions and funding sources to clean up or treat~~  
36 ~~groundwater or to provide alternative water supplies to ensure the~~  
37 ~~provision of safe drinking water to communities identified in~~  
38 ~~paragraph (1).~~

~~(4) The effect of the use of the moneys in the Nitrate at Risk Fund for the purposes described in Section 13446 on nitrate contaminated groundwater used as a source of drinking water.~~

~~(b) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.~~

~~13448. If the responsibility for administering Chapter 4 (commencing with Section 116270) of Part 12 of Division 104 of the Health and Safety Code is transferred to the state board, the state board shall succeed to and is vested with all of the authority, duties, powers, responsibilities, and jurisdiction of the State Department of Public Health pursuant to this article.~~

~~13449. This article shall remain in effect only until January 1, 2024, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2024, deletes or extends that date.~~

*SECTION 1. Article 6.5 (commencing with Section 14615) is added to Chapter 5 of Division 7 of the Food and Agricultural Code, to read:*

*Article 6.5. Nitrate at Risk Fund Charge*

*14615. (a) For the purposes of this section, “fund” means the Nitrate at Risk Fund created by Section 116765 of the Health and Safety Code.*

*(b) (1) Except as provided in subdivision (d), every person who sells for use in this state fertilizer materials shall pay to the secretary the applicable charge. Those sales expressly include all sales made electronically, telephonically, or by any other means that result in a fertilizer material being shipped to or used in the state. There is a rebuttable presumption that fertilizer materials that are sold or distributed into or within this state by any person are sold or distributed for use in this state. A fertilizer materials charge shall be paid at the following rates for sales of fertilizer materials for use in this state:*

*(1) Until January 1, 2016, a charge of \$0.01 per dollar of materials sold.*

*(2) On and after January 1, 2016, the State Department of Public Health may increase the amount of the charge to an amount no greater than \$0.04 per dollar of materials sold if 80 percent of the moneys in the fund are committed. In determining the amount*

1 of the charge, the State Department of Public Health shall consider  
 2 the demand for the moneys in the fund. In determining the charge,  
 3 the State Department of Public Health shall allow stakeholder  
 4 participation and make available to the public the information  
 5 upon which the State Department of Public Health calculates,  
 6 bases, or determines the charge. The Fertilizer Inspection Advisory  
 7 Board, described in Section 14581, shall discuss the charge and  
 8 provide a recommendation to the State Department of Public  
 9 Health.

10 (2) A seller of fertilizer materials shall remit the fertilizer  
 11 materials charge to the secretary to be deposited in the fund.

12 (c) The fertilizer materials charge shall not be imposed when  
 13 more than sixty million dollars (\$60,000,000) of the moneys in the  
 14 fund are uncommitted.

15 (d) A person is not required to pay the charge provided for in  
 16 this section as follows:

17 (1) In those cases where the person did not first sell the fertilizer  
 18 material into or within this state or have actual knowledge, at the  
 19 time of its sale, that the fertilizer would be sold for use in this state.

20 (2) If the fertilizer material is for use in further manufacturing  
 21 or formulating of fertilizer material.

22 SEC. 2. Chapter 4.7 (commencing with Section 116765) is  
 23 added to Part 12 of Division 104 of the Health and Safety Code,  
 24 to read:

25  
 26 *CHAPTER 4.7. NITRATE AT RISK FUND*

27  
 28 116765. The Nitrate at Risk Fund is hereby established in the  
 29 State Treasury, to be administered by the State Department of  
 30 Public Health. Notwithstanding Section 13340 of the Government  
 31 Code, moneys in the Nitrate at Risk Fund are continuously  
 32 appropriated, without regard to fiscal years, to the State  
 33 Department of Public Health for the purposes described in Section  
 34 116766.

35 116766. (a) Moneys in the Nitrate at Risk Fund shall be used  
 36 for loans, principal forgiveness loans, or grants to a water system  
 37 operating in a high-nitrate at-risk area that is one of the following:

38 (1) A small community water system serving a disadvantaged  
 39 community.

1 (2) An unregulated system of 2 to 15, inclusive, service  
2 connections.

3 (3) A nontransient noncommunity water system owned by a  
4 public agency.

5 (b) Moneys in the Nitrate at Risk Fund may be used for any of  
6 the following purposes:

7 (1) Preplanning drinking water projects.

8 (2) Planning drinking water projects.

9 (3) Interim water solutions.

10 (4) Constructing drinking water projects.

11 (5) Operating and maintaining drinking water systems. The  
12 State Department of Public Health shall ensure that moneys used  
13 for the purposes of this paragraph are for the operation and  
14 maintenance of drinking water systems in communities that have  
15 a substantial need and otherwise would not be able to afford to  
16 operate or maintain their systems. The State Department of Public  
17 Health shall ensure that moneys available for the operation and  
18 maintenance of a particular drinking water system pursuant to  
19 this paragraph shall not be permanent and shall be phased out  
20 over time.

21 (c) Moneys in the Nitrate at Risk Fund shall not be used for  
22 loans, principal forgiveness loans, or grants to a water system  
23 that is a small community water system for the purposes of either  
24 paragraph (2) or (4) of subdivision (b) unless no other funding  
25 source is available to that system for that purpose.

26 116767. (a) On or before January 1, 2022, the state board, in  
27 consultation with any other state entity or research institution as  
28 appropriate, shall submit to the Legislature a report that includes  
29 all of the following information:

30 (1) Communities that rely on contaminated drinking water as  
31 a primary source of drinking water.

32 (2) The principal contaminants and other constituents of concern  
33 affecting groundwater and contamination levels in the groundwater  
34 sources for the communities described in paragraph (1).

35 (3) Potential solutions and funding sources to clean up or treat  
36 groundwater or to provide alternative water supplies to ensure  
37 the provision of safe drinking water to communities identified in  
38 paragraph (1).



1     (4) *The effect of the use of the moneys in the Nitrate at Risk*  
2 *Fund for the purposes described in Section 116766 on nitrate*  
3 *contaminated groundwater used as a source of drinking water.*

4     (b) *A report to be submitted pursuant to subdivision (a) shall*  
5 *be submitted in compliance with Section 9795 of the Government*  
6 *Code.*

7     116768. *If the responsibility for administering Chapter 4*  
8 *(commencing with Section 116270) is transferred to the state*  
9 *board, the state board shall succeed to and is vested with all of*  
10 *the authority, duties, powers, responsibilities, and jurisdiction of*  
11 *the State Department of Public Health pursuant to this article.*

12     116769. *This article shall remain in effect only until January*  
13 *1, 2024, and as of that date is repealed, unless a later enacted*  
14 *statute, that is enacted before January 1, 2024, deletes or extends*  
15 *that date.*

16     SEC. 3. This act is an urgency statute necessary for the  
17 immediate preservation of the public peace, health, or safety within  
18 the meaning of Article IV of the Constitution and shall go into  
19 immediate effect. The facts constituting the necessity are:

20     To address the public health problem of nitrate contaminated  
21 drinking water as soon as possible, it is necessary for this act to  
22 take effect immediately.