

AMENDED IN ASSEMBLY APRIL 23, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2712

Introduced by Assembly Member Daly
(Principal coauthors: Assembly Members Allen and Wagner)
(Principal coauthor: Senator Correa)

February 21, 2014

An act to ~~add Chapter 6.655 (commencing with Section 25268.1) to Division 20 of the Health and Safety Code~~ amend Section 8 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933), relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 2712, as amended, Daly. Hazardous materials: Orange County Water ~~District~~. *District: groundwater remediation.*

Existing law, the Orange County Water District Act, prescribes the powers of the Orange County Water District. Existing law grants the district the power to perform actions useful or necessary to replenish the underground water basin within the district, or to augment and protect the quality of the common water supplies of the district. The act authorizes the district to conduct any investigations of the quality of the surface and groundwaters within the district that the district determines to be necessary and appropriate to determine whether those waters are contaminated or polluted. The act authorizes the district to expend available funds to perform any cleanup, abatement, or remedial work required under the circumstances which, in the determination of the board of directors, is required by the magnitude of the endeavor or the urgency of prompt action needed to prevent, abate, or contain any threatened or existing contamination of, or pollution to, the surface or

groundwaters of the district, and requires the person causing or threatening to cause that contamination or pollution to be liable to the district to the extent of the reasonable costs actually incurred.

This bill would require the district, in order to obtain, by legal action or proceeding, the recovery of the costs of cleaning up or containing contamination, abating the effects of the contamination or pollution, or taking other emergency, removal, or remedial action described above, to provide notice of the action to a regional water quality control board and the Department of Toxic Substances Control, to meet and confer with agencies and any responsible party, and to comply with the requirements for consistency with the National Contingency Plan, as prescribed. The bill would state the intent of the Legislature that the district adopt a policy to address the process for groundwater remediation projects and that the district enter into a memorandum of understanding between it, the Department of Toxic Substances Control, the California Regional Water Quality Control Board, Santa Ana region, and the Orange County Health Care Agency to establish a process of review of the district's proposed groundwater remediation projects.

The bill would declare that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~(1) Under existing law, the Site Designation Committee in the California Environmental Protection Agency is authorized to designate an administering agency for oversight of a remedial action to a hazardous substance release. Existing law requires the administering agency to supervise the site investigation and remedial action conducted by the responsible party and, upon determining that the site investigation and remedial action has been satisfactorily completed, to issue a certificate of completion to the responsible party.~~

~~This bill would impose requirements on the Orange County Water District when conducting a remediation project at a hazardous waste release site located in the district and would prohibit the district from~~

~~implementing a remediation project unless the plan for the proposed remediation project is approved pursuant to the specified procedures. The bill would require the district to develop a plan for a proposed remediation project and to submit the plan, for review and approval, to the Department of Toxic Substances Control, a California regional water quality control board, or a certified unified program agency, as specified. If the regulatory agency does not approve the plan, the bill would allow the district to submit the plan to the site designation committee for review. The site designation committee would be required to disapprove the plan, approve the plan, or conditionally approve the plan.~~

~~If the regulatory agency disapproves the plan and the plan is not submitted for review, or if the site designation committee disapproves the plan, the bill would prohibit the district from seeking cost recovery from a responsible party for the hazardous materials release site pursuant to specified state and local laws. The bill would also prohibit the district from seeking that cost recovery with regard to the parts of a conditionally approved plan that were revised or deleted by the site designation committee.~~

~~The bill would impose a state-mandated local program by requiring the district and a certified unified program agency to take specified actions:~~

~~(2) The bill would declare that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.~~

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

- 1 *SECTION 1. It is the intent of the Legislature that the Orange*
- 2 *County Water District adopt a policy that would address the*

1 *process for groundwater remediation projects with the following*
2 *goals:*

3 *(a) To provide increased clarity and certainty of the process*
4 *for all interested parties.*

5 *(b) To provide for the swift remediation of groundwater*
6 *contamination.*

7 *(c) To uphold the responsibilities of the district.*

8 *SEC. 2. It is further the intent of the Legislature that the Orange*
9 *County Water District enter into a memorandum of understanding*
10 *between the district, the Department of Toxic Substances Control,*
11 *California Regional Water Quality Control Board, Santa Ana*
12 *region, and the Orange County Health Care Agency to establish*
13 *a process for review of the district's proposed groundwater*
14 *remediation projects.*

15 *SEC. 3. Section 8 of the Orange County Water District Act*
16 *(Chapter 924 of the Statutes of 1933), as added by Section 4 of*
17 *Chapter 802 of the Statutes of 1989, is amended to read:*

18 *Sec. 8. (a) The district may conduct any investigations of the*
19 *quality of the surface and groundwaters within the district-which*
20 *that the district determines to be necessary and appropriate to*
21 *determine whether those waters are contaminated or polluted.*

22 *(b) The district may expend available funds to perform any*
23 *cleanup, abatement, or remedial work required under the*
24 *circumstances which, in the determination of the board of directors,*
25 *is required by the magnitude of the endeavor or the urgency of*
26 *prompt action needed to prevent, abate, or contain any threatened*
27 *or existing contamination of, or pollution to, the surface or*
28 *groundwaters of the district. This action may be taken in default*
29 *of, or in addition to, remedial work by the person causing the*
30 *contamination or pollution, or other persons. The district may*
31 *perform the work itself, by contract, or by or in cooperation with*
32 *any other governmental agency.*

33 *(c) If, pursuant to subdivision (b), the contamination or pollution*
34 *is cleaned up or contained, the effects thereof abated, or, in the*
35 *case of threatened contamination or pollution, other necessary*
36 *emergency, removal, or remedial action is taken, and the district*
37 *takes action in accordance with subdivision (d), the person causing*
38 *or threatening to cause that contamination or pollution shall be*
39 *liable to the district to the extent of the reasonable costs actually*
40 *incurred in cleaning up or containing the contamination or*

1 pollution, abating the effects of the contamination or pollution, or
2 taking other remedial action. The amount of those costs, together
3 with court costs and reasonable attorneys' fees, shall be recoverable
4 in a civil action by, and paid to, the district. In any such action,
5 the necessity for the cleanup, containment, abatement, or remedial
6 work, and the reasonableness of the costs incurred therewith, shall
7 be presumed, and the defendant shall have the burden of proving
8 that the work was not necessary, and the costs not reasonable.

9 *(d) In order to obtain, by legal action or proceeding, the*
10 *recovery of the costs of cleaning up or containing contamination,*
11 *abating the effects of the contamination or pollution, or taking*
12 *other emergency, removal, or remedial action pursuant to*
13 *subdivision (c), the district shall do all of the following:*

14 *(1) Provide notice of the action to the office of the regional*
15 *water quality control board for the region in which the action shall*
16 *be taken and the Department of Toxic Substances Control.*

17 *(2) With respect to the contamination, meet and confer with any*
18 *agency that may be an administering agency and make reasonable*
19 *efforts to meet and confer with any responsible party that is subject*
20 *to an order or directive of the administering agency.*

21 *(3) Comply with the requirements for consistency with the*
22 *National Contingency Plan (40 C.F.R. Part 300) that would apply*
23 *to the State of California if it were seeking to recover costs*
24 *pursuant to Section 9607(a)(4)(A) of the Comprehensive*
25 *Environmental Response, Compensation, and Liability Act of 1980*
26 *(42 U.S.C. Sec. 9607(a)(4)(A)) or the Carpenter-Presley-Tanner*
27 *Hazardous Substances Account Act (Chapter 6.8 (commencing*
28 *with Section 25300) of Division 20 of the Health and Safety Code).*

29 *SEC. 4. The Legislature finds and declares that a special law*
30 *is necessary and that a general law cannot be made applicable*
31 *within the meaning of Section 16 of Article IV of the California*
32 *Constitution because the Department of Toxic Substances Control,*
33 *the California regional water quality control board, and the*
34 *certified unified program agency for the County of Orange have*
35 *provided and continue to provide oversight for groundwater*
36 *cleanups at many sites in north and central Orange County, and*
37 *the Orange County Water District has undertaken investigations*
38 *and planning for several potential groundwater cleanup projects*
39 *covering large parts of those same areas, creating the potential*
40 *for conflicting and inconsistent regulation of businesses and*

1 landowners in those parts of Orange County that may be
2 responsible for conducting groundwater investigations and
3 cleanups at their sites.

4 SEC. 5. If the Commission on State Mandates determines that
5 this act contains costs mandated by the state, reimbursement to
6 local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

9 SECTION 1. Chapter 6.655 (commencing with Section
10 25268.1) is added to Division 20 of the Health and Safety Code,
11 to read:

12
13 CHAPTER 6.655. ORANGE COUNTY WATER DISTRICT
14 REMEDIATION
15

16 25268.1. For purposes of this chapter, the following terms shall
17 have the following meanings:

18 (a) "CUPA" means a certified unified program agency certified
19 to implement the unified program pursuant to Chapter 6.11
20 (commencing with section 25404).

21 (b) "Department" means the Department of Toxic Substances
22 Control.

23 (c) "District" means the Orange County Water District,
24 established pursuant to the Orange County Water District Act
25 (Chapter 924 of the Statutes of 1933).

26 (d) "Hazardous materials release site" has the same meaning as
27 defined in subdivision (e) of Section 25260.

28 (e) "Plan" means the plan for the proposed remediation project
29 submitted to the regulatory agency pursuant to Section 25268.2.

30 (f) "Regional board" means a California regional water quality
31 control board.

32 (g) "Regulatory agency" or "appropriate regulatory agency"
33 means the department, or the CUPA or the regional board that is
34 responsible for overseeing the implementation of a remediation
35 project by the district.

36 (h) "Remediation project" means a project that consists of either,
37 or both, of the following:

38 (1) A remedial action, as defined in subdivision (g) of Section
39 25260.

1 ~~(2) A site investigation, as defined in subdivision (i) of Section~~
2 ~~25260.~~

3 ~~(i) “Responsible party” means a person described in subdivision~~
4 ~~(a) of Section 25323.5 of this code or subdivision (a) of Section~~
5 ~~13304 of the Water Code.~~

6 ~~(j) “Site designation committee” means the committee~~
7 ~~established pursuant to Section 25261.~~

8 ~~25268.2. (a) The district shall comply with the requirements~~
9 ~~of this chapter when conducting a remediation project at a~~
10 ~~hazardous materials release site located in the district and shall~~
11 ~~not implement a remediation project unless the plan for the~~
12 ~~proposed remediation project is approved by the appropriate~~
13 ~~regulatory agency pursuant to this section or by the site designation~~
14 ~~committee pursuant to Section 25268.3.~~

15 ~~(b) If the board of the district elects to implement a remediation~~
16 ~~project, the board shall approve the remediation project and notify~~
17 ~~the appropriate regulatory agency that will be overseeing the~~
18 ~~district’s implementation of the remediation project.~~

19 ~~(c) The district shall develop a plan for the proposed remediation~~
20 ~~project and shall submit the plan for the proposed remediation~~
21 ~~project to the appropriate regulatory agency, for review and~~
22 ~~approval by the appropriate regulatory agency.~~

23 ~~(d) (1) If the regulatory agency does not approve the plan, the~~
24 ~~regulatory agency and the district shall promptly meet and confer~~
25 ~~to resolve the regulatory agency’s objections.~~

26 ~~(2) If, after conducting the meeting specified in paragraph (1);~~
27 ~~the regulatory agency does not approve the plan, the district may~~
28 ~~submit the plan for the proposed remediation project to the site~~
29 ~~designation committee for review pursuant to Section 25268.3.~~

30 ~~(3) If the district does not submit the disapproved plan to the~~
31 ~~site designation committee, the district shall not seek cost recovery~~
32 ~~from a responsible party for the hazardous materials release site~~
33 ~~pursuant to the provisions specified in paragraphs (1) to (3);~~
34 ~~inclusive of subdivision (a) of Section 25268.4.~~

35 ~~25268.3. (a) The site designation committee shall review a~~
36 ~~plan submitted to it for a proposed remediation project pursuant~~
37 ~~to the procedures specified in this section.~~

38 ~~(b) The district and the regulatory agency may present any~~
39 ~~relevant information to the site designation committee and shall~~
40 ~~be given a reasonable opportunity to be heard.~~

1 ~~(e) After reviewing the plan, the site designation committee~~
2 ~~shall take one of the following actions, impartially and by a~~
3 ~~majority vote:~~

4 ~~(1) Disapprove the plan.~~

5 ~~(2) Approve the plan.~~

6 ~~(3) Conditionally approve the plan. The proposed conditions~~
7 ~~may require the district to revise the plan to delete any part of the~~
8 ~~plan to which the regulatory agency objected.~~

9 ~~25268.4. (a) If the site designation committee disapproves the~~
10 ~~plan pursuant to paragraph (1) of subdivision (e) of Section~~
11 ~~25268.3, the district shall not seek cost recovery from a responsible~~
12 ~~party for the hazardous materials release site pursuant to any of~~
13 ~~the following:~~

14 ~~(1) Division 7 (commencing with Section 13000) of the Water~~
15 ~~Code.~~

16 ~~(2) Chapter 6.5 (commencing with Section 25100), Chapter 6.7~~
17 ~~(commencing with Section 25280), Chapter 6.75 (commencing~~
18 ~~with Section 25299.10), or Chapter 6.8 (commencing with Section~~
19 ~~25300).~~

20 ~~(3) Any other state or local law imposing liability for cleanup~~
21 ~~of releases of hazardous materials.~~

22 ~~(b) If the site designation committee deletes any part of the plan~~
23 ~~as a condition for approval, pursuant to paragraph (3) of~~
24 ~~subdivision (e) of Section 25268.3, and the district proceeds with~~
25 ~~the project as conditionally approved, the district shall not seek~~
26 ~~cost recovery from a responsible party for the hazardous materials~~
27 ~~release site pursuant to the provisions specified in paragraphs (1)~~
28 ~~to (3), inclusive, of subdivision (a), with regard to the parts of the~~
29 ~~plan that were revised or deleted by the site designation committee.~~

30 ~~SEC. 2. The Legislature finds and declares that a special law~~
31 ~~is necessary and that a general law cannot be made applicable~~
32 ~~within the meaning of Section 16 of Article IV of the California~~
33 ~~Constitution because the Department of Toxic Substances Control,~~
34 ~~the California regional water quality control board, and the certified~~
35 ~~unified program agency for the County of Orange have provided~~
36 ~~and continue to provide oversight for groundwater cleanups at~~
37 ~~many sites in north and central Orange County, and the Orange~~
38 ~~County Water District has undertaken investigations and planning~~
39 ~~for several potential groundwater cleanup projects covering large~~
40 ~~parts of those same areas, creating the potential for conflicting and~~

1 inconsistent regulation of businesses and landowners in those parts
2 of Orange County that may be responsible for conducting
3 groundwater investigations and cleanups at their sites.

4 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
5 ~~Section 6 of Article XIII B of the California Constitution for certain~~
6 ~~costs that may be incurred by a local agency or school district~~
7 ~~because, in that regard, a local agency or school district has the~~
8 ~~authority to levy service charges, fees, or assessments sufficient~~
9 ~~to pay for the program or level of service mandated by this act,~~
10 ~~within the meaning of Section 17556 of the Government Code.~~

11 However, if the Commission on State Mandates determines that
12 this act contains other costs mandated by the state, reimbursement
13 to local agencies and school districts for those costs shall be made
14 pursuant to Part 7 (commencing with Section 17500) of Division
15 4 of Title 2 of the Government Code.