

AMENDED IN SENATE JULY 1, 2014

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)
(Coauthor: Assembly Member Quirk-Silva)

February 21, 2014

An act to 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: 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~~ *when* cleaning up or containing contamination, *contamination or pollution*, abating the effects of the contamination or pollution, or, *in the case of threatened contamination or pollution*, 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~~ *of* 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.

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 process
- 3 for groundwater remediation projects with the following goals:

1 (a) To provide increased clarity and certainty of the process for
2 all interested parties.

3 (b) To provide for the swift remediation of groundwater
4 contamination.

5 (c) To uphold the responsibilities of the district.

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

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

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

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

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

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

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

12 *(d) When cleaning up or containing contamination or pollution,*
 13 *abating the effects thereof, or, in the case of threatened*
 14 *contamination or pollution, taking other necessary emergency,*
 15 *removal, or remedial actions, the district shall do all of the*
 16 *following:*

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

20 (2) With respect to the ~~contamination,~~ *contamination or*
 21 *pollution,* meet and confer with any agency that may be an
 22 administering agency and make reasonable efforts to meet and
 23 confer with any responsible party that is subject to an order or
 24 directive of the administering agency.

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

34 SEC. 4. The Legislature finds and declares that a special law
 35 is necessary and that a general law cannot be made applicable
 36 within the meaning of Section 16 of Article IV of the California
 37 Constitution because the Department of Toxic Substances Control,
 38 the California ~~regional water quality control board,~~ *Regional Water*
 39 *Quality Control Board, Santa Ana region,* and the certified unified
 40 program agency for the County of Orange have provided and

1 continue to provide oversight for groundwater cleanups at many
2 sites in north and central Orange County, and the Orange County
3 Water District has undertaken investigations and planning for
4 several potential groundwater cleanup projects covering large parts
5 of those same areas, creating the potential for conflicting and
6 inconsistent regulation of businesses and landowners in those parts
7 of Orange County that may be responsible for conducting
8 groundwater investigations and cleanups at their sites.

9 SEC. 5. If the Commission on State Mandates determines that
10 this act contains costs mandated by the state, reimbursement to
11 local agencies and school districts for those costs shall be made
12 pursuant to Part 7 (commencing with Section 17500) of Division
13 4 of Title 2 of the Government Code.

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