

AMENDED IN SENATE AUGUST 22, 2014

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, when cleaning up or containing contamination or pollution, abating the effects of the contamination or pollution, or, in the case of threatened contamination or pollution, taking other ~~emergency, removal~~, *removal* or remedial action described above, to provide *prior* 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, *as provided*, and to comply with the requirements of the National Contingency Plan, as prescribed. ~~The~~ *Among other things*, 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 this act shall*
- 2 *improve the process used by the Orange County Water District*
- 3 *when it pursues any cost recovery actions for projects that involve*
- 4 *cleaning up or containing contamination or pollution.*

1 ~~SECTION 1.~~

2 ~~SEC. 2.~~ It is the intent of the Legislature that the Orange County
3 Water District adopt a policy that would address the process for
4 groundwater remediation projects with the following goals:

5 (a) To provide increased clarity and certainty of the process for
6 all interested parties, *including potential responsible parties*.

7 (b) To provide for the swift remediation of groundwater
8 contamination.

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

10 ~~SEC. 2.~~

11 ~~SEC. 3.~~ It is further the intent of the Legislature that the Orange
12 County Water District enter into a memorandum of understanding
13 between the district, the Department of Toxic Substances Control,
14 California Regional Water Quality Control Board, Santa Ana
15 region, and the Orange County Health Care Agency to establish
16 a process for review of the district's proposed groundwater
17 remediation projects.

18 ~~SEC. 3.~~

19 ~~SEC. 4.~~ Section 8 of the Orange County Water District Act
20 (Chapter 924 of the Statutes of 1933), as added by Section 4 of
21 Chapter 802 of the Statutes of 1989, is amended to read:

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

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

37 (c) If, pursuant to subdivision (b), the contamination or pollution
38 is cleaned up or contained, the effects thereof abated, or, in the
39 case of threatened contamination or pollution, other necessary
40 emergency, ~~removal~~, *removal* or remedial action is taken, the

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

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

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

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

26 (3) Comply with the requirements of the National Contingency
 27 Plan (40 C.F.R. Part 300) that apply to ~~the State of California any~~
 28 ~~county, city, or water district~~ pursuant to Section ~~9607(a)(4)(A)~~
 29 ~~9607(a)(4)(B)~~ of the Comprehensive Environmental Response,
 30 Compensation, and Liability Act of 1980 (42 U.S.C. Sec.
 31 ~~9607(a)(4)(A))~~ ~~9607(a)(4)(B))~~ and with the
 32 Carpenter-Presley-Tanner Hazardous Substance Account Act
 33 (Chapter 6.8 (commencing with Section 25300) of Division 20 of
 34 the Health and Safety Code).

35 ~~SEC. 4.~~

36 *SEC. 5.* The Legislature finds and declares that a special law
 37 is necessary and that a general law cannot be made applicable
 38 within the meaning of Section 16 of Article IV of the California
 39 Constitution because the Department of Toxic Substances Control,
 40 the California Regional Water Quality Control Board, Santa Ana

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

11 ~~SEC. 5.~~

12 *SEC. 6.* If the Commission on State Mandates determines that
13 this act contains costs mandated by the state, reimbursement to
14 local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.