

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1470

**Introduced by Assembly Member Alejo
(Coauthors: Assembly Members Brown, Daly, and Dodd)**

February 27, 2015

An act to add ~~Section 510.5 to the Labor Code, relating to employment Chapter 10 (commencing with Section 31420) to Division 21 of, and to repeal Sections 31422 and 31423 of, the Public Resources Code, relating to coastal wildlife protection.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1470, as amended, Alejo. ~~Working hours: overtime. Safe Water and Wildlife Protection Act of 2016.~~

Existing law establishes the State Coastal Conservancy and prescribes the membership and functions and duties of the conservancy with respect to preservation of coastal resources in the state.

This bill would enact the Safe Water and Wildlife Protection Act of 2016, which would require the State Water Resources Control Board, until January 1, 2020, to establish and coordinate the Harmful Algal Bloom Task Force, comprised of specified representatives of state agencies, including the conservancy, in consultation with the Secretary for Environmental Protection, and would prescribe the functions and duties of the task force. The bill would require the task force to review the risks and negative impacts of harmful algal blooms and microcystin pollution and to submit a summary of its findings and recommendations to the appropriate policy and fiscal committees of the Legislature, the

Secretary of the Natural Resources Agency, and the secretary on or before January 1, 2019. The act would require the task force, before providing funding recommendations or submitting a summary of findings, to notify the public about ongoing activities and provide opportunities for public review and comment on applied research, projects, and programs. The act would authorize the conservancy, the Department of Fish and Wildlife, the Wildlife Conservation Board, and the State Water Resources Control Board to enter into contracts and provide grants, upon appropriation, from specified bond funds available under the Water Quality, Supply, and Infrastructure Improvement Act of 2014, the California Sea Otter Fund, or from other appropriate funds for applied research, projects, and programs, recommended by the task force, aimed at preventing or sustainably mitigating harmful algal blooms, including cyanotoxins and microcystin pollution in the waters of the state.

~~Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law establishes the Division of Labor Standards Enforcement in the Department of Industrial Relations for the enforcement of labor laws, including overtime payment. Under existing law, a person who violates the provisions regulating work hours is guilty of a misdemeanor.~~

~~This bill would establish a rebuttable presumption that an employee is exempt from overtime pay if the employee earns total gross annual compensation of at least \$100,000 and regularly performs any of the exempt duties or responsibilities of an executive, administrative, or professional employee as set forth in the Industrial Welfare Commission Wage Orders. This bill, to rebut the presumption, would require evidence that the employee did not earn total gross annual compensation of at least \$100,000, that the employee did not earn at least \$1,000 per week, as specified, or that the employee did not regularly perform at least one exempt duty of an executive, administrative, or professional employee. This bill would only apply to an employee whose primary duty includes office or nonmanual work, as described.~~

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

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

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) Harmful blooms of algae in the waters of the state, including,*
4 *but not limited to, coastal lakes, estuaries, rivers and streams,*
5 *wetlands, and inland lakes and reservoirs, represent a threat to*
6 *water supplies, human health, endangered wildlife, and*
7 *recreational activities.*

8 *(b) Degradation of watersheds, nutrient loading, increased*
9 *water diversions, and climate change have been linked to the global*
10 *expansion of harmful algal blooms, with high toxin production*
11 *noted regularly in lakes, rivers, and other waters of the state.*

12 *(c) The state's waters are especially prone to harmful algal*
13 *blooms due to our warm climate, numerous water diversions, and*
14 *stressed waterways.*

15 *(d) Harmful algae can produce potent hepatotoxins and*
16 *neurotoxins, collectively referred to as cyanotoxins. Microcystins*
17 *are the most commonly found cyanotoxin in the state's impacted*
18 *waters. Other cyanotoxins, such as the neurotoxins anatoxin-a*
19 *and saxitoxin, are also present in California's waters, but, at*
20 *present, little is known about them.*

21 *(e) Cyanotoxins are poisonous to humans, pets, livestock, birds,*
22 *and other wildlife via ingestion, inhalation, or skin exposure. A*
23 *single dose of microcystin can cause prolonged toxicity by cycling*
24 *repeatedly between the liver and intestines.*

25 *(f) Harmful algal blooms of microcystins are occurring in waters*
26 *throughout California, and are threatening our water supply and*
27 *health. Areas with recurrent and worsening cyanotoxin pollution*
28 *include the Klamath and Sacramento Rivers, the Sacramento and*
29 *San Joaquin Rivers (from the Sacramento Delta to San Francisco*
30 *Bay), and Clear Lake. Pinto Lake, Copco Lake, Iron Gate*
31 *Reservoir, and three segments of the Klamath River have been*
32 *listed as impaired due to cyanobacteria. Bird deaths attributed to*
33 *microcystins have also been reported from the Salton Sea.*

34 *(g) A harmful algal bloom in the Pacific Ocean is currently*
35 *threatening the harvest of Dungeness crabs, an important and*
36 *lucrative state industry. The algal bloom could affect the*
37 *Dungeness crab population in the ports of Crescent City, Trinity,*

1 Eureka, Fort Bragg, Bodega Bay, San Francisco, Half Moon Bay,
2 and Morro Bay.

3 (h) The Pinto Lake watershed is being evaluated for total
4 maximum daily load (TMDL) regulation for microcystin, and was
5 considered for remediation as an Environmental Protection Agency
6 “superfund” site.

7 (i) California’s southern sea otters, a state and federally listed
8 threatened species, have died from microcystin poisoning. The
9 source of sea otter exposure appears to be
10 microcystin-contaminated freshwater runoff and possibly
11 contaminated prey species.

12 (j) Sea otters and humans eat some of the same marine foods
13 that can concentrate microcystin in body tissues; hence, food safety
14 is a public health concern. Freshwater and marine fish and
15 shellfish have not been routinely tested for cyanotoxins in
16 California and limited diagnostic testing is available.

17 (k) The state needs a coordinated multiagency effort to develop
18 actions and projects that will prevent or mitigate toxic blooms and
19 associated cyanotoxin pollution.

20 SEC. 2. Chapter 10 (commencing with Section 31420) is added
21 to Division 21 of the Public Resources Code, to read:

22

23 CHAPTER 10. SAFE WATER AND WILDLIFE PROTECTION ACT
24 OF 2016

25

26 31420. This chapter shall be known, and may be cited, as the
27 Safe Water and Wildlife Protection Act of 2016.

28 31421. For purposes of this chapter, the following terms have
29 the following meanings:

30 (a) “Board” means the State Water Resources Control Board.

31 (b) “Task force” means the Harmful Algal Bloom Task Force
32 created pursuant to Section 31422.

33 (c) “Waters of the state” means any surface waters in the state,
34 including, but not limited to, coastal lakes, lagoons and estuaries,
35 rivers, streams, inland lakes and reservoirs, wetlands, and marine
36 waters.

37 31422. (a) The board shall establish and coordinate the
38 Harmful Algal Bloom Task Force, comprised of a representative
39 of each of the State Department of Public Health, the Department
40 of Fish and Wildlife, the Department of Food and Agriculture, the

1 conservancy, and other relevant agency representatives, to be
2 determined by the chairperson of the board, in consultation with
3 the Secretary for Environmental Protection. The board may
4 augment an existing task force or network to accomplish the
5 requirements of this chapter.

6 (b) This section shall remain in effect only until January 1, 2020,
7 and as of that date is repealed, unless a later enacted statute, that
8 is enacted before January 1, 2020, deletes or extends that date.

9 31423. The functions and duties of the task force include all
10 of the following:

11 (a) Assess and prioritize the actions and research necessary to
12 develop measures that prevent or sustainably mitigate toxic algal
13 blooms in the waters of the state. The assessment shall consider
14 the linked impacts of toxic algal blooms and cyanotoxins on human
15 and animal health, as well as in the context of ecosystem health
16 and water quality.

17 (b) Solicit and review proposals from universities, local
18 governments, California Native American tribes, and nonprofit
19 organizations for applied research, projects, and programs that
20 accomplish both of the following:

21 (1) Contribute to development of strategies or implementation
22 of activities that prevent or sustainably mitigate harmful algal
23 blooms, including cyanotoxins and microcystin pollution in the
24 waters of the state.

25 (2) Establish harmful algal bloom monitoring programs or
26 develop laboratory capacity for analyzing water samples for
27 harmful algal bloom pollution.

28 (c) Provide funding recommendations to the chairperson of the
29 board and to the Department of Fish and Wildlife, the Wildlife
30 Conservation Board, the conservancy, other members of the task
31 force, and other relevant agency representatives for those
32 proposals for applied research, projects, and programs, described
33 in subdivision (b), that the task force determines will contribute
34 to the development of prevention strategies and sustainable
35 mitigation actions to address harmful algal blooms.

36 (d) Review the risks and negative impacts of harmful algal
37 blooms and microcystin pollution on humans, wildlife, fisheries,
38 livestock, pets, and aquatic ecosystems, and develop
39 recommendations for prevention and long-term mitigation. The
40 task force shall submit a summary of its findings based on the

1 review, including its recommendations to the appropriate policy
2 and fiscal committees of the Legislature, the Secretary for
3 Environmental Protection, and the Secretary of the Natural
4 Resources Agency on or before January 1, 2019. The
5 recommendations shall provide guidance on what type of programs
6 or state resources will be required to prevent harmful toxic algal
7 blooms and microcystin pollution in the waters of the state over
8 time.

9 (e) Organize meetings and workshops of experts and
10 stakeholders as needed to implement this section.

11 (f) Before providing funding recommendations pursuant to
12 subdivision (c), or submitting a summary of findings pursuant to
13 subdivision (d), the task force shall establish a notification
14 procedure and publish notices to inform the public about ongoing
15 activities, and provide opportunities for public review and comment
16 on applied research, projects, and programs solicited pursuant to
17 subdivision (b).

18 (g) This section shall remain in effect only until January 1, 2020,
19 and as of that date is repealed, unless a later enacted statute, that
20 is enacted before January 1, 2020, deletes or extends that date.

21 31424. The conservancy, the Department of Fish and Wildlife,
22 the Wildlife Conservation Board, and the board, or any of them,
23 may enter into contracts and provide grants, upon appropriation,
24 from funds available pursuant to Section 79730 of the Water Code,
25 Section 18754.1 of the Revenue and Taxation Code, or from other
26 appropriate funds accessible by any of these departments and
27 agencies for applied research, projects, and programs
28 recommended by the task force pursuant to subdivision (c) of
29 Section 31423.

30 ~~SECTION 1. Section 510.5 is added to the Labor Code, to~~
31 ~~read:~~

32 ~~510.5. (a) There shall be a rebuttable presumption that an~~
33 ~~employee is exempt from Section 510 if the employee earns total~~
34 ~~gross annual compensation of at least one hundred thousand dollars~~
35 ~~(\$100,000) and also customarily and regularly performs any one~~
36 ~~or more of the exempt duties or responsibilities of an executive,~~
37 ~~administrative, or professional employee as set forth in the~~
38 ~~Industrial Welfare Commission Wage Orders.~~

39 ~~(b) (1) "Total gross annual compensation" shall include at least~~
40 ~~one thousand dollars (\$1,000) per week paid on a salary or fee~~

1 basis. Total gross annual compensation may also include
2 commissions, nondiscretionary bonuses, and other nondiscretionary
3 compensation earned during a 52-week period. Total gross annual
4 compensation does not include board, lodging, and other facilities,
5 and does not include payments for medical insurance, payments
6 for life insurance, contributions to retirement plans, and the cost
7 of other fringe benefits.

8 (2) If an employee's total gross annual compensation does not
9 meet the minimum amount established in subdivision (a) by the
10 last pay period of the 52-week period, the employer may, during
11 the last pay period or within one month after the end of the 52-week
12 period, make one final payment sufficient to achieve the required
13 total. If an employer fails to make that payment, this section shall
14 not apply.

15 (3) An employee who does not work a full year for the employer,
16 either because the employee is newly hired after the beginning of
17 the year or ends the employment before the end of the year, is
18 exempt from Section 510 pursuant to this section if the employee
19 receives a pro rata portion of the minimum amount established in
20 subdivision (a), based upon the number of weeks that the employee
21 will be or has been employed. An employer may make one final
22 payment as described in paragraph (2) within one month after the
23 end of employment, or this section shall not apply.

24 (4) The employer may utilize any 52-week period as the year,
25 such as a calendar year, a fiscal year, or an anniversary of hire
26 year. If the employer does not identify some other year period in
27 advance, the calendar year will apply.

28 (e) The presumption created under subdivision (a) shall be
29 rebutted only by evidence of one or more of the following:

30 (1) The employee did not earn total gross annual compensation
31 of at least one hundred thousand dollars (\$100,000).

32 (2) The employee did not earn at least one thousand dollars
33 (\$1,000) per week paid on a salary or fee basis.

34 (3) The employee did not customarily and regularly perform at
35 least one exempt duty or responsibility of an executive,
36 administrative, or professional employee as set forth in the
37 Industrial Welfare Commission Wage Orders.

38 (d) This section applies only to employees whose primary duty
39 includes performing office or nonmanual work.

1 ~~(e) (1) This section does not apply to nonmanagement~~
2 ~~production-line workers and nonmanagement employees in~~
3 ~~maintenance, construction, and similar occupations, such as~~
4 ~~carpenters, electricians, mechanics, plumbers, iron workers,~~
5 ~~craftsmen, operating engineers, longshoremen, construction~~
6 ~~workers, laborers, and other employees who perform work~~
7 ~~involving repetitive operations with their hands, physical skill, and~~
8 ~~energy, regardless of the amount of their compensation.~~
9 ~~(2) This section does not apply to an employee covered under~~
10 ~~a valid collective bargaining agreement that expressly provides~~
11 ~~for the wages, hours of work, and working conditions of~~
12 ~~employees, including premium wage rates for all overtime hours~~
13 ~~worked.~~