

ASSEMBLY BILL

No. 2550

Introduced by Assembly Member Patterson

February 19, 2016

An act to add Section 1052.5 to the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2550, as introduced, Patterson. State Water Resources Control Board: instream flow curtailments: compensation.

Under existing law, the State Water Resources Control Board administers a water rights program pursuant to which the board grants permits and licenses to divert water. Existing law requires each person who diverts water to file with the board a statement of his or her diversion and use, unless the diversion is covered by a permit or license to appropriate water on file with the board.

This bill would require the board to financially compensate a person who is unable to divert the full amount of water authorized under his or her permit or license due to a board-issued instream flow curtailment, and a person who is required to file a statement of diversion and use and is unable to divert the same amount of water in the succeeding year due to a board-issued instream flow curtailment. The bill would only apply this requirement to instream flow curtailments issued by the board on and after January 1, 2017.

This bill would make various findings and declarations.

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. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) The holder of a water right uses that right for beneficial uses
- 4 that benefit Californians, including municipal uses, such as drinking
- 5 water for families, and growing a variety of crops for California
- 6 families.
- 7 (2) Californians are dependent on water for uses such as
- 8 drinking, bathing, cooking, and growing food for both sustenance
- 9 and economic opportunities. One out of every five jobs in the
- 10 Central Valley is related to agriculture, from farm workers to
- 11 salespersons, and, for every dollar produced on a farm, more than
- 12 \$3.50 is generated in the local and regional economy, providing
- 13 real jobs in California.
- 14 (3) There is a direct and actual cost to Californians when the
- 15 State Water Resources Control Board issues curtailments for
- 16 instream flows and prioritizes these actions over the consequences
- 17 of failure to deliver water to people.
- 18 (4) Instream flow requirements restrict other users of water and
- 19 have unknown economic impacts.
- 20 (5) At the time the State Water Resources Control Board issues
- 21 a curtailment for instream flow, the action is tantamount to a taking,
- 22 a contractual violation of, or alteration to the terms of the water
- 23 permit that has associated costs.
- 24 (6) In determining instream flow requirements for a waterway,
- 25 the State Water Resources Control Board should be required to
- 26 investigate the potential impact a new or modified requirement
- 27 will have on rural and agricultural communities.
- 28 (7) Monetary compensation to the holder of a water right would
- 29 assist in the viability of purchasing and providing water through
- 30 alternative sources, purchasing water efficiency equipment, and
- 31 implementing water conservation programs for municipal and
- 32 other water users alike. These actions would help to meet
- 33 California’s objectives of maintaining a diverse economy and
- 34 assisting local economies and municipalities in times of state
- 35 emergencies such as droughts.
- 36 (8) In extreme times of drought, the priorities of the State of
- 37 California are to the people it serves.

1 (b) The Legislature finds and declares that it intends affected
2 parties to be monetarily compensated when an action by the State
3 Water Resources Control Board curtails water delivery due to
4 instream flow priorities.

5 SEC. 2. Section 1052.5 is added to the Water Code, to read:

6 1052.5. (a) The state board shall financially compensate the
7 following persons in accordance with subdivision (b):

8 (1) A person who holds a permit or license to divert water
9 pursuant to this division who is unable to divert the full amount
10 of water authorized under his or her permit or license due to a
11 board-issued instream flow curtailment.

12 (2) A person who is required to file with the board a statement
13 of his or her diversion and use of water pursuant to Section 5101
14 and who is unable to divert the same amount of water in the
15 immediately succeeding year due to a board-issued instream flow
16 curtailment.

17 (b) Compensation shall be per acre-foot and at a rate comparable
18 to the average price that is paid for a similar type of water under
19 similar circumstances in the state. When determining
20 compensation, the state board shall consider costs of developing
21 and providing the water, including access, storage, conveyance,
22 and field distribution systems.

23 (1) Compensation for a person described in paragraph (1) of
24 subdivision (a) shall be based on the difference between the amount
25 of water the person is authorized to divert under his or her permit
26 and the amount the person is authorized to divert under the
27 curtailment.

28 (2) Compensation for a person described in paragraph (2) of
29 subdivision (a) shall be based on the difference between the amount
30 of water the person specified in his or her statement of diversion
31 and use in the previous year and the amount the person is
32 authorized to divert under the curtailment.

33 (c) This section shall only apply to an instream flow curtailment
34 issued on and after January 1, 2017.