

Assembly Bill No. 2963

Passed the Assembly August 30, 1996

Chief Clerk of the Assembly

Passed the Senate August 23, 1996

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1996, at ____ o'clock __M.

Private Secretary of the Governor



CHAPTER ____

An act to amend Sections 1601, 1603, and 2090 of the Fish and Game Code, to amend Section 66632.2 of the Government Code, to amend Section 30600 of, and to add Section 21080.33 to, the Public Resources Code, and to amend Section 13269 of the Water Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 2963, Firestone. Environmental quality.

(1) Existing law requires a governmental agency or public utility to submit prescribed plans and other information to the Department of Fish and Game and requires those entities and other persons, as defined, to follow prescribed procedures concerning a project that will affect a river, stream, or lake, except certain emergency work. Violation is a misdemeanor.

Existing law, the California Environmental Quality Act, requires a lead agency to prepare an environmental impact report on a project which it proposes to carry out or approve that may have a significant effect on the environment, as defined, unless the project is exempt from the act. Other provisions require the lead agency to consult with the Department of Fish and Game in prescribed instances relative to endangered or threatened species.

Existing law requires a permit to be obtained from the San Francisco Bay Conservation and Development Commission in prescribed instances.

Existing law requires a coastal development permit to be obtained for any development in the coastal zone.

Existing law requires specified persons to file a report with the appropriate California regional water quality control board in prescribed instances relating to the discharge of waste, requires the regional board to take prescribed action, and prohibits specified conduct respecting those discharges.



This bill would exempt from all of those requirements specified emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway which is damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, and would exempt certain other emergency activities from certain of those requirements. The bill would create a state-mandated local program by imposing new duties on local agencies with regard to determining the applicability of, and filing and posting notice of, the exemption, and by creating new crimes.

(2) This bill would make additional changes in Sections 1601 and 1603 of the Fish and Game Code proposed by SB 12 of the 1995–96 First Extraordinary Session, to be operative only if that SB 12 and this bill are both chaptered and this bill is chaptered last.

(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 no reimbursement is required by this act for specified reasons.

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

SECTION 1. (a) The Legislature hereby finds and declares that the maintenance of a sound state highway system is declared to be of the utmost interest to the people of the state. Safe, available, and sound highways are essential to the people of the state.

(b) Accordingly, it is the intent of the Legislature that any highway damaged by fire, flood, storm, earthquake, or landslide should be repaired as quickly as possible to ensure the smooth flow of traffic and prevent unnecessary inconvenience and delay.

SEC. 2. Section 1601 of the Fish and Game Code is amended to read:

1601. (a) Except as provided in this section, general plans sufficient to indicate the nature of a project for construction by, or on behalf of, any state or local



governmental agency or any public utility shall be submitted to the department if the project will (1) divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake designated by the department in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit, (2) use material from the streambeds designated by the department, or (3) result in the disposal or deposition of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake designated by the department. If an existing fish or wildlife resource may be substantially adversely affected by that construction, the department shall notify the governmental agency or public utility of the existence of the fish or wildlife resource together with a description thereof and shall propose reasonable modifications in the proposed construction that will allow for the protection and continuance of the fish or wildlife resource, including procedures to review the operation of those protective measures. The proposals shall be submitted within 30 days from the date of receipt of the plans, with the provision that the time period may be extended by mutual agreement. Upon a determination by the department and after notice to the affected parties of the necessity for an onsite investigation, or upon the request for an onsite investigation by the affected parties, the department shall make an onsite investigation of the proposed construction and shall make the investigation before it proposes any modifications.

(b) (1) Within 14 days from the date of receipt of the department's proposals, the affected agency or public utility shall notify the department in writing whether the proposals are acceptable, except that the time period may be extended by mutual agreement. If the proposals are not acceptable to the affected agency or public utility, the agency or public utility shall so notify the department. Upon request, the department shall meet with the affected agency or public utility within seven days of receipt of the notification, or at a time mutually agreed



upon, for the purpose of developing proposals that are acceptable to the department and the affected agency or public utility.

(2) If mutual agreement is not reached at the meeting held pursuant to paragraph (1), a panel of arbitrators shall be established. The panel of arbitrators shall be established within seven days from the date of the meeting, or at a time mutually agreed upon, and shall be composed of one representative of the department, one representative of the affected agency or public utility, and a third person mutually agreed upon, or if no agreement can be reached, the third person shall be appointed in the manner provided by Section 1281.6 of the Code of Civil Procedure. The third person shall act as chair of the panel. The panel may settle disagreements and make binding decisions regarding the fish and wildlife modifications. The arbitration shall be completed within 14 days from the date that the composition of the panel is established, unless the time is extended by mutual agreement. The expenses of the department representative shall be paid by the department; the expenses of the representative of the governmental agency or the public utility shall be paid by the governmental agency or the public utility; and the expenses of the chair of the panel shall be paid one-half by each party.

(c) A governmental agency or public utility proposing a project subject to this section shall not commence operations on that project until the department has found that the project will not substantially adversely affect an existing fish or wildlife resource or until the department's proposals, or the decisions of a panel of arbitrators, have been incorporated into the project.

(d) The department shall determine and specify types of work, methods of performance, or remedial measures that are exempt from the operation of this section.

(e) With regard to any project that involves the routine maintenance and operation of water supply, drainage, flood control, or waste treatment and disposal facilities, notice to, and agreement with, the department



is not required subsequent to the initial notification and agreement, unless the work, as described in the agreement, is substantially changed or conditions affecting fish and wildlife resources substantially change, and the resources are adversely affected by the activity conducted under the agreement. This subdivision applies in any instance where notice to, and agreement with, the department has been attained prior to January 1, 1977.

(f) This section does not apply to any of the following projects, except that notification by the agency or public utility performing any of the following projects shall be made to the department within 14 days from the date of the commencement of the project:

(1) (A) Immediate emergency work necessary to protect life or property.

(B) Immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

SEC. 2.5. Section 1601 of the Fish and Game Code is amended to read:

1601. (a) Except as provided in this section, general plans sufficient to indicate the nature of a project for construction by, or on behalf of, any state or local



governmental agency or any public utility shall be submitted to the department if the project will (1) divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake designated by the department in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit, (2) use material from the streambeds designated by the department, or (3) result in the disposal or deposition of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake designated by the department. If an existing fish or wildlife resource may be substantially adversely affected by that construction, the department shall notify the governmental agency or public utility of the existence of the fish or wildlife resource together with a description thereof and shall propose reasonable modifications in the proposed construction that will allow for the protection and continuance of the fish or wildlife resource, including procedures to review the operation of those protective measures. The department's description of an existing fish or wildlife resource shall be specific and detailed and the department shall make available upon request the information upon which its conclusion is based that the resource may be substantially adversely affected. The proposals shall be submitted within 30 days from the date of receipt of the plans, except that the time period may be extended by mutual agreement. Upon a determination by the department and after notice to the affected parties of the necessity for an onsite investigation or upon the request for an onsite investigation by the affected parties, the department shall make an onsite investigation of the proposed construction and shall make the investigation before it proposes any modifications.

(b) (1) Within 14 days from the date of receipt of the department's proposals, the affected agency or public utility shall notify the department in writing whether the proposals are acceptable, except that the time period may be extended by mutual agreement. If the department's proposals are not acceptable to the affected agency or



public utility, the agency or public utility shall so notify the department. Upon request, the department shall meet with the affected agency or public utility within seven days of receipt of the notification, or at a time mutually agreed upon, for the purpose of developing proposals that are acceptable to the department and the affected agency or public utility.

(2) If mutual agreement is not reached at the meeting held pursuant to paragraph (1), a panel of arbitrators shall be established. The panel of arbitrators shall be established within seven days from the date of the meeting, or at a time mutually agreed upon, and shall be composed of one representative of the department, one representative of the affected agency or public utility, and a third person mutually agreed upon, or if no agreement can be reached, the third person shall be appointed in the manner provided by Section 1281.6 of the Code of Civil Procedure. The third person shall act as chair of the panel. The panel may settle disagreements and make binding decisions regarding the fish and wildlife modifications. The arbitration shall be completed within 14 days from the date that the composition of the panel is established, unless the time is extended by mutual agreement. The expenses of the department representative shall be paid by the department; the expenses of the representative of the governmental agency or the public utility shall be paid by the governmental agency or the public utility; and the expenses of the chair of the panel shall be paid one-half by each party.

(c) A governmental agency or public utility proposing a project subject to this section shall not commence operations on that project until the department has found that the project will not substantially adversely affect an existing fish or wildlife resource or until the department's proposals, or the decisions of a panel of arbitrators, have been incorporated into the project. The department shall not condition the streambed alteration agreement on a project subject to this section on the receipt of another state or federal permit.



(d) The department shall determine and specify types of work, methods of performance, or remedial measures that are exempt from the operation of this section.

(e) With regard to any project that involves the routine maintenance and operation of water supply, drainage, flood control, or waste treatment and disposal facilities, notice to, and agreement with, the department is not required subsequent to the initial notification and agreement, unless the work as described in the agreement, is substantially changed or conditions affecting fish and wildlife resources substantially change, and the resources are adversely affected by the activity conducted under the agreement. This subdivision applies in any instance where notice to, and agreement with, the department has been attained, prior to January 1, 1977.

(f) This section does not apply to any of the following projects, except that notification by the agency or public utility performing any of the following projects shall be made to the department within 14 days from the date of the commencement of the project:

(1) (A) Immediate emergency work necessary to protect life or property.

(B) Immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire,



flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(g) The department may enter into agreements with applicants for a term of not more than five years for the performance of operations on projects subject to this section. The terms of the agreement may be renegotiated at any time by mutual consent of the parties. Each agreement shall be renewed automatically by the department at the expiration of its term unless the department determines that there has been a substantial change in conditions. If there is a disagreement between the department and the applicant as to whether there has been a substantial change in conditions, the department and the applicant shall proceed to arbitration pursuant to subdivision (b). The department may charge a fee when the agreement is entered into and for each renewal, but may not charge an annual fee for this purpose.

SEC. 3. Section 1603 of the Fish and Game Code is amended to read:

1603. (a) It is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel or bank of any river, stream, or lake designated by the department, or use any material from the streambeds, without first notifying the department of that activity, except when the department has been notified pursuant to Section 1601. The department, within 30 days from the date of receipt of that notice, or within the time determined by mutual written agreement, shall, when an existing fish or wildlife resource may be substantially adversely affected by that activity, notify the person of the existence of that fish or wildlife resource together with a description of the fish or wildlife, and shall submit to the person its proposals as to measures necessary to protect fish and wildlife. Upon a determination by the department of the necessity for onsite investigation, or upon the request for an onsite investigation by the affected parties, the department shall notify the affected parties that it shall make onsite investigation of the activity and shall make that



investigation before it shall propose any measure necessary to protect the fish and wildlife.

(b) (1) Within 14 days from the date of receipt of the department's proposals, the affected person shall notify the department in writing as to the acceptability of the proposals, except that the time period may be extended by mutual agreement. If those proposals are not acceptable to the affected person, the person shall so notify the department. Upon request, the department shall meet with the affected person within seven days from the date of receipt of that notification or by a date that may be mutually agreed upon for the purpose of developing proposals which are acceptable to the department and the affected person.

(2) If mutual agreement is not reached at the meeting held pursuant to paragraph (1), a panel of arbitrators shall be established, although appointment of the panel may be deferred by mutual consent of the parties. The panel shall be established within seven days from the date of that meeting and shall be composed of one representative of the department, one representative of the affected person, and a third person mutually agreed upon, or if no agreement can be reached, the third person shall be appointed in the manner provided by Section 1281.6 of the Code of Civil Procedure. The third person shall act as panel chair. The panel shall have power to settle disagreements and make binding decisions regarding fish and wildlife modifications. The arbitration shall be completed within 14 days from the date that the composition of the panel is established, unless the time period is extended by mutual agreement. Expenses of the department representative shall be borne by the department; expenses of the representative of the person who diverts or obstructs the natural flow, or changes the bed, of any river, stream, or lake, or uses any material from the streambeds shall be borne by that person; and expenses of the chair of the panel shall be paid one-half by each party.

(c) It is unlawful for any person to commence any activity affected by this section until the department has



found that it will not substantially adversely affect an existing fish or wildlife resource or until the department's proposals, or the decisions of a panel of arbitrators, have been incorporated into the projects. If the department fails to act within 30 days from the date of the receipt of the notice, the person may commence the activity.

(d) It is unlawful for any person to engage in a project or activity affected by this section, unless the project or activity is conducted in accordance with the department's proposals or the decisions of the panel of arbitrators.

(e) With regard to any project which involves the routine maintenance and operation of water supply, drainage, flood control, or waste treatment and disposal facilities, notice to and agreement with the department shall not be required subsequent to the initial notification and agreement unless the work as described in the agreement is substantially changed, or conditions affecting fish and wildlife resources substantially change, and those resources are adversely affected by the activity conducted under the agreement. This subdivision applies in any instance where notice to, and agreement with, the department has been attained prior to January 1, 1977.

(f) This section does not apply to any of the following projects, except that notification by the agency or public utility performing any of the following projects shall be made to the department within 14 days from the date of the commencement of the project:

(1) (A) Immediate emergency work necessary to protect life or property.

(B) Immediate emergency repairs to public service facilities necessary to maintain service as result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an



official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

SEC. 3.5. Section 1603 of the Fish and Game Code is amended to read:

1603. (a) It is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the department, or use any material from the streambeds, without first notifying the department of that activity, except when the department has been notified pursuant to Section 1601. The department, within 30 days from the date of receipt of that notice, or within the time determined by mutual written agreement, shall, when an existing fish or wildlife resource may be substantially adversely affected by that activity, notify the person of the existence of that fish or wildlife resource together with a description of the fish or wildlife, and shall submit to the person its proposals as to measures necessary to protect fish and wildlife. Upon a determination by the department of the necessity for onsite investigation or upon the request for an onsite investigation by the affected parties, the department shall notify the affected parties that it shall make an onsite investigation of the activity and shall make that investigation before it proposes any measure necessary to protect the fish and wildlife. The department's description of an existing fish or wildlife resource shall be specific and detailed and the department shall make available upon request the information upon which its conclusion is based that the resource may be substantially adversely affected.



(b) (1) Within 14 days from the date of receipt of the department's proposals, the affected person shall notify the department in writing whether the proposals are acceptable, except that the time period may be extended by mutual agreement. If the department's proposals are not acceptable to the affected person, the person shall so notify the department. Upon request, the department shall meet with the affected person within seven days from the date of receipt of that notification or by a date that may be mutually agreed upon for the purpose of developing proposals that are acceptable to the department and the affected person.

(2) If mutual agreement is not reached at the meeting held pursuant to paragraph (1), a panel of arbitrators shall be established. However, appointment of the panel may be deferred by mutual consent of the parties. The panel shall be established within seven days from the date of that meeting and shall be composed of one representative of the department, one representative of the affected person, and a third person mutually agreed upon, or, if no agreement can be reached, the third person shall be appointed in the manner provided by Section 1281.6 of the Code of Civil Procedure. The third person shall act as panel chair. The panel may settle disagreements and make binding decisions regarding fish and wildlife modifications. The arbitration shall be completed within 14 days from the date that the composition of the panel is established, unless the time period is extended by mutual agreement. The expenses of the department representative shall be borne by the department; the expenses of the representative of the person who diverts or obstructs the natural flow, or changes the bed, of any river, stream, or lake, or uses any material from the streambeds shall be borne by that person; and the expenses of the chair of the panel shall be paid one-half by each party.

(c) It is unlawful for any person to commence any activity affected by this section until the department has found that it will not substantially adversely affect an existing fish or wildlife resource or until the department's



proposals, or the decisions of a panel of arbitrators, have been incorporated into the activity. If the department fails to act within 30 days from the date of the receipt of the notice, the person may commence the activity. The department shall not condition the streambed alteration agreement on the receipt of another state or federal permit.

(d) It is unlawful for any person to engage in an activity affected by this section, unless the activity is conducted in accordance with the department's proposals or the decisions of the panel of arbitrators.

(e) If an activity involves the routine maintenance and operation of water supply, drainage, flood control, or waste treatment and disposal facilities, notice to and agreement with the department shall not be required subsequent to the initial notification and agreement unless the work as described in the agreement is substantially changed or conditions affecting fish and wildlife resources substantially change and those resources are adversely affected by the activity conducted under the agreement. This subdivision applies in any instance where notice to, and agreement with, the department has been attained prior to January 1, 1977.

(f) This section does not apply to any of the following projects, except that notification by the agency or public utility performing any of the following projects shall be made to the department within 14 days from the date of the commencement of the project:

(1) (A) Immediate emergency work necessary to protect life or property.

(B) Immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an



official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(g) The department may enter into agreements with applicants for a term of not more than five years for the performance of activities subject to this section. The terms of the agreement may be renegotiated at any time by mutual consent of the parties. Each agreement shall be renewed automatically by the department at the expiration of its term unless the department determines that there has been a substantial change in conditions. If there is a disagreement between the department and the applicant as to whether there has been a substantial change in conditions, the department and the applicant shall proceed to arbitration pursuant to subdivision (b). The department may charge a fee when the agreement is entered into and for each renewal, but may not charge an annual fee for this purpose.

SEC. 4. Section 2090 of the Fish and Game Code is amended to read:

2090. (a) Except as provided in subdivision (c), each state lead agency shall consult with the department, in accordance with guidelines developed by the department, to ensure that any action authorized, funded, or carried out by the state lead agency is not likely to jeopardize the continued existence of any endangered or threatened species.

(b) Whenever the department consults with a state lead agency pursuant to Section 21080.3, 21080.4, 21080.5, or 21104.2 of the Public Resources Code, the department shall issue a written finding based on its determination of whether a proposed project would jeopardize the continued existence of any endangered species or



threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of the species. The written finding shall also include the department's determination of whether a proposed project would result in any taking of an endangered species or a threatened species incidental to the proposed project. The department shall base its determination on the best available scientific information.

(c) This section does not apply to any of the following projects, except that notification by the agency or public utility performing any of the following projects shall be made to the department within 14 days from the date of the commencement of the project:

(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

SEC. 5. Section 66632.2 of the Government Code is amended to read:

66632.2. (a) The owner or operator of any public service facilities need not obtain a permit from the commission for the construction within or upon any



public highway or street of any public service facilities to provide service to persons or property located within the area of the commission's jurisdiction. The public service facilities referred to in this subdivision shall be limited to those which are necessary for and are customarily used to provide direct and immediate service to the persons or property requiring that service.

(b) The owner or operator of public service facilities or a public street or road located anywhere within the area of the commission's jurisdiction may, without first obtaining a permit from the commission, make emergency repairs to those facilities as may be necessary to maintain service if the emergency requires repairs before an emergency permit can be obtained under subdivision (f) of Section 66632 and if that notification is given to the commission not later than the first working day following the undertaking.

(c) "Public service facilities," as used in this section, means any facilities used or intended to be used to provide water, gas, electric, or communications service and any pipelines, and appurtenant facilities, for the collection or transmission of sewage, flood or storm waters, petroleum, gas, or any liquid or other substance.

(d) Any agency that intends to undertake, carry out, or approve an emergency project to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage, need not obtain a permit from the commission, if notification is given to the commission not later than the first working day following the commencement of the undertaking or action. This subdivision does not exempt from this section any agency that is required to obtain from the commission a permit to undertake, carry out, or approve a project to expand or widen a highway damaged



by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

SEC. 6. Section 21080.33 is added to the Public Resources Code, to read:

21080.33. This division does not apply to any emergency project undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This section does not exempt from this division any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

SEC. 7. Section 30600 of the Public Resources Code is amended to read:

30600. (a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.

(b) (1) Prior to certification of its local coastal program, a local government may, with respect to any development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620, and 30620.5, establish procedures for the filing, processing, review, modification, approval, or denial of a coastal development permit. Those procedures may be incorporated and made a part of the procedures relating to any other appropriate land use development permit issued by the local government.

(2) A coastal development permit from a local government shall not be required by this subdivision for



any development on tidelands, submerged lands, or on public trust lands, whether filled or unfilled, or for any development by a public agency for which a local government permit is not otherwise required.

(c) If prior to certification of its local coastal program, a local government does not exercise the option provided in subdivision (b), or a development is not subject to the requirements of subdivision (b), a coastal development permit shall be obtained from the commission or from a local government as provided in subdivision (d).

(d) After certification of its local coastal program or pursuant to the provisions of Section 30600.5, a coastal development permit shall be obtained from the local government as provided for in Section 30519 or Section 30600.5.

(e) This section does not apply to any of the following projects, except that notification by the agency or public utility performing any of the following projects shall be made to the commission within 14 days from the date of the commencement of the project:

(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire,



flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

SEC. 8. Section 13269 of the Water Code is amended to read:

13269. (a) The provisions of subdivisions (a) and (b) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by a regional board as to a specific discharge or a specific type of discharge where the waiver is not against the public interest. The waiver shall be conditional and may be terminated at any time by the board.

(b) Upon notification of the appropriate regional board of the discharge or proposed discharge, except as provided in subdivision (c), the provisions of subdivisions (a) and (b) of Section 13260, subdivision (a) of Section 13263, and subdivision (a) of Section 13264 shall not apply to discharge resulting from any of the following emergency activities:

(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.



(c) Subdivision (b) is not a limitation of the authority of a regional board under subdivision (a) to determine that any provision of this division shall not be waived or to establish conditions of a waiver. Subdivision (b) shall not apply to the extent that it is inconsistent with any waiver or other order or prohibition issued under this division.

SEC. 9. (a) Section 2.5 of this bill incorporates amendments to Section 1601 of the Fish and Game Code proposed by both this bill and Senate Bill 12 of the 1995–96 First Extraordinary Session. Except as provided in subdivision (b), it shall become operative if (1) both bills are enacted on or before January 1, 1997, (2) each bill amends Section 1601 of the Fish and Game Code, and (3) this bill is enacted after SB 12 of the 1995–96 First Extraordinary Session, in which case Section 1601 of the Fish and Game Code, as amended by SB 12 of the 1995–96 First Extraordinary Session, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.

(b) In the event that SB 12 of the 1995–96 First Extraordinary Session takes effect after January 1, 1997, Section 2.5 of this bill shall become operative on the effective date of SB 12 of the 1995–96 First Extraordinary Session, and Section 2 of this bill shall become inoperative on that date.

SEC. 10. (a) Section 3.5 of this bill incorporates amendments to Section 1603 of the Fish and Game Code proposed by both this bill and Senate Bill 12 of the 1995–96 First Extraordinary Session. Except as provided in subdivision (b), it shall become operative if (1) both bills are enacted on or before January 1, 1997, (2) each bill amends Section 1603 of the Fish and Game Code, and (3) this bill is enacted after SB 12 of the 1995–96 First Extraordinary Session, in which case Section 1603 of the Fish and Game Code, as amended by SB 12 of the 1995–96 First Extraordinary Session, shall remain operative only until the operative date of this bill, at which time Section



3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

(b) In the event that SB 12 of the 1995–96 First Extraordinary Session takes effect after January 1, 1997, Section 3.5 of this bill shall become operative on the effective date of SB 12 of the 1995–96 First Extraordinary Session, and Section 3 of this bill shall become inoperative on that date.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved _____, 1996

Governor

