

Introduced by Senator Corbett

January 6, 2009

An act to add Division 20.6 (commencing with Section 30970) to the Public Resources Code, relating to coastal resources, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 42, as introduced, Corbett. Coastal resources: seawater intake.

(1) Under the Warren-Alquist State Energy Resources Conservation and Development Act, the State Energy Resources Conservation and Development Commission (energy commission) has the exclusive authority to certify a site for the construction of a new thermal powerplant or the modification of an existing thermal powerplant and related facilities.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone, as defined. The act regulates various types of developments within the coastal zone, including industrial developments and thermal electric generating plants.

This bill would prohibit a state agency, as defined, from authorizing, approving, or certifying a new powerplant or industrial facility, as defined, that uses an open ocean intake, as defined, a new open ocean intake, or the expansion of an existing open ocean intake. The bill also would, on and after January 1, 2015, prohibit a powerplant from using once-through cooling, as defined.

(2) Under existing law, the State Water Resources Control Board (state board) and the 9 California regional water quality control boards regulate water quality in accordance with the Porter-Cologne Water Quality Control Act (act) and the federal Clean Water Act. Under the

act, the state board is required to adopt specified state policies with respect to water quality as it relates to the coastal marine environment, including a policy requiring coastal powerplants and other industrial installations using seawater for cooling, heating, or industrial processing to use the best available site, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life.

Existing law establishes the State Coastal Conservancy in the Resources Agency and authorizes the conservancy to acquire, manage, direct the management of, and conserve specified coastal lands and wetlands in the state. Existing law establishes the Coastal Trust Fund in the State Treasury to receive and disburse funds paid to the conservancy in trust. Existing law authorizes the conservancy to expend the moneys in the fund for purposes of the San Francisco Bay Area Conservancy Program and for other specified purposes.

This bill would require, from January 1, 2011, to December 31, 2014, a powerplant that uses once-through cooling, as defined, to pay a specified fee. The bill would require the state board to collect the fee and to deposit the revenues from the fee in the Marine Life Restoration Account, which the bill would establish in the fund. The bill would require the conservancy to administer the account and would continuously appropriate the moneys in the account to the conservancy and the board to reimburse their costs of administering the fee and to the conservancy for specified projects and activities that address the impacts of once-through cooling processes, thereby making an appropriation.

Vote: majority. Appropriation: yes. 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) Nineteen coastal powerplants located in California use
- 4 once-through cooling water intake systems. The majority of those
- 5 powerplants are located on bays and estuaries where there are
- 6 sensitive fish nurseries and populations of many important species,
- 7 including species important to the commercial and recreational
- 8 fishing industries.

1 (b) Coastal powerplants in California collectively withdraw up
2 to 16.3 billion gallons of water per day.

3 (c) The United States Environmental Protection Agency has
4 determined that there are multiple undesirable and unacceptable
5 environmental impacts associated with once-through cooling
6 technology.

7 (d) The Ocean Protection Council and the State Lands
8 Commission have passed resolutions expressing concern about
9 the devastating impacts of the once-through cooling process on
10 California's aquatic ecosystems and calling for expeditious
11 phaseout of once-through cooling systems.

12 (e) Various studies have documented the harm caused by
13 once-through cooling processes, and it is estimated that
14 once-through cooling systems kill over 79 billion fish and other
15 marine organisms annually in California waters.

16 (f) Once-through cooling systems needlessly kill fish, larvae,
17 plankton, and other marine organisms as they are drawn into
18 once-through cooling water intake structures. Once-through cooling
19 systems also kill larger marine species such as sea lions, seals, and
20 turtles as they become trapped by those structures.

21 (g) In enclosed bays and estuaries, such as Alamitos, Santa
22 Monica, San Diego, and Elkhorn Slough, the environmental harm
23 of once-through cooling systems is often more pronounced due to
24 the cumulative impacts caused by the concentration of several
25 powerplants in biologically critical areas.

26 (h) The environmental devastation caused by once-through
27 cooling systems is counterproductive to the California Ocean
28 Protection Act (Division 25 (commencing with Section 35500) of
29 the Public Resources Code), the Marine Life Protection Act
30 (Chapter 10.5 (commencing with Section 2850) of Division 3 of
31 the Fish and Game Code), and other state efforts to ensure healthy
32 aquatic ecosystems and productive fisheries.

33 (i) Steam boiler plants using once-through cooling systems tend
34 to be less efficient and have higher rates of greenhouse gas
35 emissions than new generation sources.

36 (j) Protection of marine life in California's coastal waters,
37 prompt phaseout of once-through cooling systems, and restoration
38 of damage caused to California's aquatic environment is in the
39 best interest of the state.

SEC. 2. Division 20.6 (commencing with Section 30970) is added to the Public Resources Code, to read:

DIVISION 20.6. SEAWATER INTAKE

CHAPTER 1. DEFINITIONS

30970. The following definitions govern the interpretation of this division:

(a) "Account" means the Marine Life Restoration Account established pursuant to subdivision (c) of Section 30972.

(b) "Conservancy" means the State Coastal Conservancy established pursuant to Section 31100.

(c) "Fund" means the Coastal Trust Fund established pursuant to subdivision (a) of Section 31012.

(d) "Industrial facility" includes, but is not limited to, a desalination facility. "Industrial facility" does not include a scientific research facility or a recreational facility.

(e) "Once-through cooling" means a system that uses an open ocean intake to pump seawater from an ocean or bay and then discharges the water after only one cycle of cooling.

(f) "Open ocean intake" means a conduit for seawater intake that is above the seafloor. "Open ocean intake" does not include a well, gallery, or any other subseafloor seawater intake.

(g) "Powerplant" means an electrical generating facility, including a nuclear thermal powerplant.

(h) "Seawater" means saltwater that resides in the ocean or a bay within the waters of the state.

(i) "State agency" means the state or any agency or department of the state.

(j) "State board" means the State Water Resources Control Board established pursuant to Section 175 of the Water Code.

CHAPTER 2. OPEN OCEAN SEAWATER INTAKE

30971. Notwithstanding any other provision of law, a state agency shall not authorize, approve, or certify any of the following:

(a) A new powerplant or a new industrial facility that first commences operation on and after January 1, 2010, if that powerplant or industrial facility would use an open ocean intake.

1 (b) A new open ocean intake that first commences operation on
2 and after January 1, 2010.

3 (c) The expansion of an existing open ocean intake.

4 30971.5. (a) On and after January 1, 2015, a powerplant shall
5 not use a once-through cooling system that uses an open ocean
6 intake.

7 (b) An open ocean intake, the use of which is prohibited pursuant
8 to subdivision (a), shall not be used for any other purpose,
9 including desalination.

10
11 CHAPTER 3. SEAWATER INTAKE FEE
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13 30972. (a) From January 1, 2011, to December 31, 2014,
14 inclusive, each operator of a powerplant or industrial facility using
15 a once-through cooling system shall pay to the state board a fee
16 that is based on the amount of seawater, as determined by the state
17 board, that is removed by the powerplant or industrial facility for
18 purposes of once-through cooling.

19 (b) The fee for seawater used for once-through cooling shall be
20 fifteen one-hundred-thousandths dollars (\$0.000015) per gallon.

21 (c) The state board shall collect the fee in a manner determined
22 by the state board and, after payment of its administrative costs of
23 collection, deposit the revenue from the fee in the Marine Life
24 Restoration Account, which is hereby created in the fund.

25 30973. (a) The account shall be administered by the
26 conservancy.

27 (b) Notwithstanding Section 13340 of the Government Code,
28 the moneys in the account are continuously appropriated, without
29 regard to fiscal year, as follows:

30 (1) To the conservancy and the state board, to reimburse the
31 costs of administration and implementation of this division.

32 (2) To the conservancy, for direct expenditure and award of
33 grants for projects and activities, as authorized by the Ocean
34 Protection Council, that address the negative impacts of
35 once-through cooling systems on the mortality of all forms of
36 marine life and marine habitat.