

AMENDED IN ASSEMBLY APRIL 22, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2189

Introduced by Assembly Member Garcia

February 20, 2014

An act to amend Sections 60305, 60306, 60307, 60315, and 60317 of, and to add Section 60306.5 to, the Water Code, relating to water replenishment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2189, as amended, Garcia. Water replenishment districts: replenishment assessment.

Article XIII D of the California Constitution generally requires that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing. Existing law, the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with Article XIII D of the California Constitution. Existing law provides notice, protest, and hearing procedures for the levying of new or increased fees and charges by local government agencies pursuant to Article XIII D of the California Constitution.

Existing law, the Water Replenishment District Act, provides for the formation of water replenishment districts and grants authority to a water replenishment district relating to the replenishment, protection, and preservation of groundwater supplies within that district. The act requires the governing board of each district to follow specified procedural processes when determining whether to assess, and the amount of, a replenishment assessment. The act requires the board to

hold a public hearing to determine whether and to what extent a replenishment assessment should be levied and for the board to provide public notice of the hearing in each affected county, as specified. The act requires the board, after completing the hearing, to make certain findings and determinations. If the board determines that a replenishment assessment should be levied upon the production of groundwater from groundwater supplies, the act requires the board to fix the replenishment assessment at a uniform rate per acre-foot of groundwater produced.

~~This bill would revise and recast these provisions to conform the act to Article XIII D of the California Constitution. The bill would require the board to make the specified findings and determinations before holding the public hearing and would require the board to *identify water-producing facilities within the district that would be subject to the proposed replenishment assessment and give written notice by mail to operators* *the owners of those water-producing facilities within the district that would be subject to the proposed replenishment assessment facilities*, as specified. By requiring the board to make the specified findings and determinations at an earlier date, this bill would increase the duties of local officials and would impose a state-mandated local program. The bill would require the replenishment assessment be based upon the proportion of the costs actually incurred by the assessed operator of a water-producing facility. The bill would authorize an operator owner of a water-producing facility to submit a written protest opposing the replenishment assessment and would prohibit the board from imposing the a replenishment assessment *assessment that exceeds the rate of the prior fiscal year, as specified*, if a majority protest ~~exists~~, as specified *exists*. The bill would prohibit a replenishment assessment from being extended, imposed, or increased under certain conditions.~~

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. Section 60305 of the Water Code is amended to
2 read:

3 60305. On or before the second Tuesday in March of each year,
4 and provided the survey and report called for by Section 60300
5 has been made, the board shall do all of the following:

6 (a) Declare, by resolution, whether funds shall be raised to
7 purchase water for replenishment during the next ensuing fiscal
8 year and whether the funds shall be raised either by (a) a water
9 charge, as provided in Chapter 2 (commencing with Section 60245)
10 of Part 5, (b) a general assessment, as provided in Chapter 3
11 (commencing with Section 60250) of Part 5, (c) a replenishment
12 assessment as provided in this chapter, or (d) a combination of
13 any two or more of the foregoing, and whether the funds to be
14 raised, whether by a water charge, a general assessment, a
15 replenishment assessment, or a combination of those means, will
16 benefit, directly or indirectly, all of the persons or real property
17 and improvements within the district. The resolution shall also
18 declare whether funds shall be raised to remove contaminants from
19 groundwater supplies during the next ensuing fiscal year or to
20 exercise any other power under Section 60224, and whether funds
21 for that purpose shall be raised by a replenishment assessment as
22 provided in this chapter, with a like statement of benefit.

23 (b) Comply with the requirements of Section 60315.

24 (c) Comply with the requirements of Section 60316.

25 SEC. 2. Section 60306 of the Water Code is amended to read:

26 60306. (a) If the board, by resolution, determines that all or a
27 portion of the funds needed to purchase replenishment water, or
28 to remove contaminants from the groundwater supplies of the
29 district, or to exercise any other power under Section 60224, shall
30 be raised by the levy of a replenishment assessment, and after the
31 board makes the findings and determinations required by Sections
32 60315 and 60316, the board shall immediately publish a notice
33 that a public hearing will be held ~~on the fourth Tuesday of May~~
34 for the purpose of considering the board's determination regarding
35 whether and to what extent the estimated costs of purchasing
36 replenishment water, removing contaminants from the groundwater
37 supplies of the district, or exercising any other power under Section
38 60224 for the ensuing year shall be paid for by a replenishment

1 assessment. The notice shall contain a copy of the board's
 2 resolution, the time and place of the hearing, an invitation to all
 3 interested parties to attend and be heard in support of or opposition
 4 to the proposed assessment, the engineering survey and report,
 5 and the board's determination, and shall invite inspection of the
 6 engineering survey and report upon which the board acted. The
 7 notice shall be published in each affected county pursuant to
 8 Section 6061 of the Government Code, at least 10 days before the
 9 hearing date.

10 (b) In addition to the notice requirements of subdivision (a), the
 11 board shall identify *the water-producing facilities within the district*
 12 *from which the groundwater is produced as the facilities that would*
 13 *be subject to the proposed replenishment assessment*, and give
 14 written notice by mail to, ~~operators~~ *owners of those*
 15 *water-producing facilities within the district that would be subject*
 16 *to the proposed replenishment assessment facilities*. The notice
 17 shall be provided at least 45 calendar days before the date of the
 18 hearing and shall include all of the following:

19 (1) ~~The proposed rate of the~~ *replenishment assessment proposed*
 20 *to be imposed on each parcel water-producing facility.*

21 (2) The basis upon which the replenishment assessment *rate*
 22 was calculated, as determined by the board pursuant to subdivision
 23 ~~(f)~~ *(e)*.

24 (3) The reason for the replenishment assessment.

25 (4) The date, time, and location of the public hearing required
 26 pursuant to this section.

27 ~~(e) To fulfill the requirements of subdivision (b), the board may~~
 28 ~~send a general notice to all operators of water-producing facilities~~
 29 ~~that would be subject to the proposed replenishment assessment~~
 30 ~~and may include on the general notice the different applicable rates~~
 31 ~~that apply to different areas of the district.~~

32 ~~(d)~~

33 ~~(c) An operator owner of a water-producing facility that would~~
 34 ~~be subject to the proposed water replenishment assessment may~~
 35 ~~submit a written protest to the board opposing the proposed~~
 36 ~~replenishment assessment. An operator of a water-producing~~
 37 ~~facility that would be subject to the proposed replenishment~~
 38 ~~assessment may submit one written protest for each parcel with a~~
 39 ~~water-producing facility under the operator's control that would~~
 40 ~~be subject to the proposed replenishment assessment~~ *Each protest*

1 *shall be weighted based on the amount of groundwater produced*
2 *from the water-producing facility in the prior water year, as*
3 *reported pursuant to Section 60326 or 60326.1, as applicable.*

4 (e)

5 (d) At the conclusion of the public hearing, the board shall
6 consider all written protests against the proposed replenishment
7 assessment and if a majority protest exists, the board shall not
8 impose ~~the~~ a replenishment assessment *that exceeds the rate of*
9 *the prior fiscal year if the replenishment assessment for the prior*
10 *fiscal year is in compliance with Section 60306.5. A majority*
11 *protest exists if the submitted written protests against the*
12 *replenishment assessment represent a majority of the ~~number of~~*
13 *parcels identified pursuant to this subdivision total weighted votes,*
14 *determined by the total amount of groundwater produced from the*
15 *water-producing facility in the prior water year, as reported*
16 *pursuant to Section 60326 or 60326.1, as applicable.*

17 (f)

18 (e) The board shall determine the amount of the proposed
19 replenishment assessment that would be imposed upon the
20 operators of water-producing facilities within the district. ~~The~~
21 ~~assessment shall be based upon the proportion of the costs actually~~
22 ~~incurred by the assessed operator and may vary depending on the~~
23 ~~location of the parcel.~~

24 SEC. 3. Section 60306.5 is added to the Water Code, to read:

25 60306.5. (a) A replenishment assessment shall not be extended,
26 imposed, or increased unless all of the following are met:

27 (1) Revenue derived from the replenishment assessment does
28 not exceed the funds required *by the district to ~~purchase the~~*
29 ~~replenishment water, to remove contaminants from the groundwater~~
30 ~~supplies of the district, or to exercise any other power under Section~~
31 ~~60224 provide services to the water-producing facilities within~~
32 ~~the district, as authorized by this part.~~

33 (2) Revenue derived from the replenishment assessment is not
34 used for any purpose other than ~~to purchase replenishment water,~~
35 ~~to remove contaminants from groundwater supplies of the district,~~
36 ~~or to exercise any other power under Section 60224 the purposes~~
37 ~~for which the replenishment assessment was imposed, as authorized~~
38 ~~by this part.~~

39 (3) The amount of the replenishment assessment imposed upon
40 a ~~parcel with a water-producing facility or any person as an incident~~

1 of ownership of a water-producing facility does not exceed the
 2 proportional costs of the service attributable to the water-producing
 3 facility. ~~The proportional cost of the service attributable to the~~
 4 ~~water-producing facility shall be determined either based on the~~
 5 ~~basin the parcel with the water-producing facility overlies or by~~
 6 ~~zones of benefit determined by the board.~~

7 (b) A replenishment assessment shall not be imposed upon a
 8 person for a service unless that service *water-producing facility*
 9 *for a service unless that service* is actually used by, or immediately
 10 available to, that person *water-producing facility*. Replenishment
 11 assessments based on *the cost of potential or future use of a service*
 12 *services* are not permitted.

13 (c) A replenishment assessment shall not be imposed for general
 14 services that are provided to the public, including, but not limited
 15 to, conservation and gardening programs, if the service is available
 16 to the general public in substantially the same manner as it is
 17 available to the operator of a water-producing facility *not directly*
 18 *related to the district's services to water-producing facilities, as*
 19 *authorized by this part.*

20 SEC. 4. Section 60307 of the Water Code is amended to read:
 21 60307. The public hearing required pursuant to this chapter
 22 shall be held before the board and a quorum shall be present. The
 23 hearing may be adjourned from time to time by the president,
 24 presiding officer, or hearing officer but shall be completed by the
 25 second Tuesday of the following ~~June of May~~.

26 SEC. 5. Section 60315 of the Water Code is amended to read:
 27 60315. No later than the second Tuesday in March, the board
 28 shall, by resolution, find all of the following:

- 29 (a) The annual overdraft for the preceding water year.
- 30 (b) The estimated annual overdraft for the current water year.
- 31 (c) The estimated annual overdraft for the ensuing water year.
- 32 (d) The accumulated overdraft as of the last day of the preceding
 33 water year.
- 34 (e) The estimated accumulated overdraft as of the last day of
 35 the current water year.
- 36 (f) The total production of groundwater from the groundwater
 37 supplies within the district during the preceding water year.
- 38 (g) The estimated total production of groundwater from the
 39 groundwater supplies within the district for the current water year.

- 1 (h) The estimated total production of groundwater from the
2 groundwater supplies within the district for the ensuing water year.
- 3 (i) The changes during the preceding water year in the pressure
4 levels or piezometric heights of the groundwater contained within
5 pressure-level areas of the district, and the effects of the changes
6 in the pressure levels or piezometric heights upon the groundwater
7 supplies within the district.
- 8 (j) The estimated changes during the current water year in the
9 pressure levels or piezometric heights of the groundwater contained
10 within pressure-level areas of the district, and the estimated effects
11 of the changes in the pressure levels or piezometric heights upon
12 the groundwater supplies within the district.
- 13 (k) The quantity of water that should be purchased for the
14 replenishment of the groundwater supplies of the district during
15 the ensuing water year.
- 16 (l) The source and estimated cost of water available for the
17 replenishment.
- 18 (m) The estimated costs of replenishing the groundwater supplies
19 with the water purchased.
- 20 (n) The estimated costs of purchasing, in water years succeeding
21 the ensuing water year, that portion of the quantity of water that
22 should be purchased for the replenishment of the groundwater
23 supplies of the district during the ensuing water year, but that is
24 estimated to be unavailable for purchase during the ensuing water
25 year; estimated costs shall be based on the estimated price of water
26 for replenishment purposes during the ensuing water year.
- 27 (o) The estimated rate of the replenishment assessment required
28 to be levied upon the production of groundwater from the
29 groundwater supplies within the district during the ensuing fiscal
30 year for the purposes of accomplishing the replenishment and
31 providing a reserve fund to purchase in future years, when
32 available, that portion of the quantity of water that should be
33 purchased for the replenishment of the groundwater supplies of
34 the district during the ensuing water year, but that is estimated to
35 be unavailable for purchase during that ensuing water year.
- 36 (p) Whether any contaminants should be removed from
37 groundwater supplies during the ensuing fiscal year, and whether
38 any other actions under Section 60224 should be undertaken during
39 the ensuing fiscal year, the estimated costs of removing
40 contaminants from groundwater supplies or other actions under

1 Section 60224, and the estimated additional rate of replenishment
2 assessment required to be levied upon the production of
3 groundwater from the groundwater supplies within the district
4 during the ensuing fiscal year for those purposes.

5 (q) Whether any program for removal of contaminants or other
6 actions under Section 60224 should be a multiyear program or is
7 a continuation of a previously authorized multiyear program.

8 (r) The amount the estimated reserve funds on hand at the end
9 of the current fiscal year exceeds the annual reserve fund limit
10 determined pursuant to Section 60290.

11 SEC. 6. Section 60317 of the Water Code is amended to read:

12 60317. If the board determines that a replenishment assessment
13 shall be levied upon the production of groundwater from
14 groundwater supplies within the district during the ensuing fiscal
15 year *and the district has complied with Section 60306*, following
16 the making of that determination the board shall levy a
17 replenishment assessment on the production of groundwater from
18 the groundwater supplies within the district during the fiscal year
19 commencing on the following July 1, and the replenishment
20 assessment shall be fixed by the board at a rate per acre-foot of
21 groundwater produced *in compliance with Section 60306.5*. The
22 ~~replenishment assessment shall be imposed upon each parcel with~~
23 ~~a water-producing facility within the district and shall be paid by~~
24 ~~the operator of the water-producing facility pursuant to the~~
25 ~~provisions of Chapter 4 (commencing with Section 60325).~~ The
26 part of the assessment levied pursuant to the determination
27 provided in subdivision (c) of Section 60316, exclusive of any part
28 of the assessment for district administrative and overhead expenses,
29 shall not exceed 50 percent of the average assessment levied for
30 the current and four preceding fiscal years pursuant to
31 determinations under subdivisions (a) and (b) of Section 60316,
32 exclusive of any part of the assessment for district administrative
33 and overhead expenses.

34 SEC. 7. If the Commission on State Mandates determines that
35 this act contains costs mandated by the state, reimbursement to
36 local agencies and school districts for those costs shall be made
37 pursuant to Part 7 (commencing with Section 17500) of Division
38 4 of Title 2 of the Government Code.

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