

Assembly Bill No. 2485

CHAPTER 296

An act to amend Section 5650 of, and to add Sections 4501 and 12003.2 to, the Fish and Game Code, and to add and repeal Article 5.5 (commencing with Section 18750) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to fish and game.

[Approved by Governor September 18, 2006. Filed with
Secretary of State September 18, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2485, Jones. Fish and game: sea otters.

(1) Existing law prohibits the taking of any marine mammal, including any sea otter, whale, dolphin, porpoise, seal, and sea lion, except in accordance with the federal Marine Mammal Protection Act of 1972 and specified federal regulations. Existing law prohibits the taking or possession of any fully protected mammal, including any southern sea otter. Existing law imposes a specified misdemeanor fine or imprisonment for these regulations.

This bill would state the Legislature's intent to establish a research program focused on reducing sea otter mortality from nonpoint source pollution, and developing water and wastewater treatment technologies for pathogens or other causes affecting sea otter mortality. The bill would modify the fines and penalties for a violation of the above described existing laws relating to marine mammals and fully protected mammals to provide for the imposition of a fine of up to \$25,000 for each unlawful taking in violation of those provisions. The bill would also make legislative findings and declarations relating to cat feces and sea otter mortality, and would require any cat litter offered for sale in the state to contain one of 2 alternative statements regarding the proper disposal of cat feces. Because a violation of this requirement would be a crime under other, existing provisions that generally make violations of the Fish and Game Code a crime, the bill would create a state-mandated local program by creating a new crime.

(2) Under existing law, a person who deposits in, or permits to pass into, or place where it can pass into, the waters of this state specified substances, including any substance or material deleterious to fish, plant life, or bird life, is subject to specified civil penalties.

This bill would include in those provisions any substance or material deleterious to mammals.

(3) Under the existing Personal Income Tax Law, taxpayers are allowed to contribute amounts in excess of their tax liability for the support of specified funds.

This bill would additionally allow taxpayers to designate on their tax returns that a specified amount in excess of their tax liability be transferred to the California Sea Otter Fund, which would be created by this bill. The bill would require money in that fund, upon appropriation by the Legislature, to be allocated to the Department of Fish and Game for the purposes of establishing a sea otter fund, as prescribed, and to the California Coastal Conservancy for research and programs related to improving the near-shore ocean ecosystem, including, but not limited to, program activities to reduce sea otter mortality.

The bill would require the Franchise Tax Board, when another voluntary contribution designation is removed, to revise the form of tax returns to provide for the designation created by this bill, and would allow, upon appropriation by the Legislature, the Franchise Tax Board and the Controller to receive a portion of the funds designated to cover costs incurred in collecting and administering the funds.

The bill would provide that these provisions shall remain in effect only until January 1 of the 5th taxable year following the first appearance of the California Sea Otter Fund on the tax return, unless a later enacted statute deletes or extends that date. If the Franchise Tax Board determines that the amount of contributions estimated to be received during a calendar year will not equal or exceed the minimum contribution amount, as defined, for the calendar year, these provisions would be repealed with respect to taxable years beginning on or after January 1 of that calendar year.

(4) 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 a specified reason.

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

SECTION 1. It is the intent of the Legislature to establish a research program focused on reducing sea otter mortality from nonpoint source pollution, and developing water and wastewater treatment technologies for pathogens or other causes affecting sea otter mortality.

SEC. 2. Section 4501 is added to the Fish and Game Code, to read:

4501. (a) The Legislature finds and declares that several types of nonpoint source pollution are harmful to sea otters, and that scientific studies point to links between cat feces, the pathogen *T-gondii*, and sea otter mortality. The Legislature further finds and declares that efforts to reduce the flushing of cat litter and cat feces are steps toward better water quality in the sea otters' natural habitat.

(b) Any cat litter offered for sale in this state shall contain one of the following statements:

(1) "Encouraging your cat to use an indoor litter box, or properly disposing of outdoor cat feces, is beneficial to overall water quality. Please

do not flush cat litter in toilets or dispose of it outdoors in gutters or storm drains.”

(2) A general statement that encourages the disposal of cat feces in trash and discourages flushing cat feces in toilets or disposing of them in drains.

SEC. 3. Section 5650 of the Fish and Game Code is amended to read:

5650. (a) Except as provided in subdivision (b), it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this state any of the following:

(1) Any petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum, or carbonaceous material or substance.

(2) Any refuse, liquid or solid, from any refinery, gas house, tannery, distillery, chemical works, mill, or factory of any kind.

(3) Any sawdust, shavings, slabs, or edgings.

(4) Any factory refuse, lime, or slag.

(5) Any cocculus indicus.

(6) Any substance or material deleterious to fish, plant life, mammals, or bird life.

(b) This section does not apply to a discharge or a release that is expressly authorized pursuant to , and in compliance with, the terms and conditions of a waste discharge requirement pursuant to Section 13263 of the Water Code or a waiver issued pursuant to subdivision (a) of Section 13269 of the Water Code issued by the State Water Resources Control Board or a regional water quality control board after a public hearing, or that is expressly authorized pursuant to, and in compliance with, the terms conditions of a federal permit for which the State Water Resources Control Board or a regional water quality control board has, after a public hearing, issued a water quality certification pursuant to Section 13160 of the Water Code. This section does not confer additional authority on the State Water Resources Control Board, a regional water quality control board, or any other entity.

(c) It shall be an affirmative defense to a violation of this section if the defendant proves, by a preponderance of the evidence, all of the following:

(1) The defendant complied with all applicable state and federal laws and regulations requiring that the discharge or release be reported to a government agency.

(2) The substance or material did not enter the waters of the state or a storm drain that discharges into the waters of the state.

(3) The defendant took reasonable and appropriate measures to effectively mitigate the discharge or release in a timely manner.

(d) The affirmative defense in subdivision (c) does not apply and may not be raised in an action for civil penalties or injunctive relief pursuant to Section 5650.1.

(e) The affirmative defense in subdivision (c) does not apply and may not be raised by any defendant who has on two prior occasions in the preceding five years, in any combination within the same county in which

the case is prosecuted, either pleaded nolo contendere, been convicted of a violation of this section, or suffered a judgment for a violation of this section or Section 5650.1. This subdivision shall apply only to cases filed on or after January 1, 1997.

(f) The affirmative defense in subdivision (c) does not apply and may not be raised by the defendant in any case in which a district attorney, city attorney, or Attorney General alleges, and the court finds, that the defendant acted willfully.

SEC. 4. Section 12003.2 is added to the Fish and Game Code, to read:

12003.2. Notwithstanding Section 12002 or 12008, the punishment for any violation of Sections 4500 or 4700 is a fine of not more than twenty-five thousand dollars (\$25,000) per unlawful taking, imprisonment in the county jail for the period prescribed in Section 12002 or 12008, or both the fine and imprisonment.

SEC. 5. Article 5.5 (commencing with Section 18750) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 5.5. California Sea Otter Fund

18750. (a) An individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Sea Otter Fund, established by Section 18751. That designation is to be used as a voluntary checkoff on the tax return.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on a joint return.

(c) A designation shall be made for any taxable year on the initial return for that taxable year, and once made is irrevocable. If payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made. If that no designee is specified, the contribution shall be transferred to the General Fund, after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and administration of funds under this article.

(d) If an individual designates a contribution to more than one account or fund listed on the tax return, and the amount available for designation is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) When another voluntary contribution designation is removed from the tax return, the Franchise Tax Board shall revise the form of the return to include a space labeled the "California Sea Otter Fund" to allow for the designation permitted. The forms shall include in the instruction information that the contribution may be in the amount of one dollar (\$1) or more and that the contribution shall be used to support increased investigation, prevention, and enforcement actions to decrease sea otter mortality, and to provide for research and programs related to sea otters.

(f) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

18751. There is in the State Treasury the California Sea Otter Fund to receive contributions made pursuant to Section 18750. The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money that taxpayers have designated pursuant to Section 18750 to be transferred to the California Sea Otter Fund. The Controller shall transfer from the Personal Income Tax Fund to the California Sea Otter Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18750 for payment into that fund.

18752. All money transferred to the California Sea Otter Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) Fifty percent of the revenues remaining after allocation pursuant to subdivision (a), to the Department of Fish and Game for the purposes of establishing a sea otter fund to be used within the department's index coding system for increased investigation, prevention, and enforcement actions.

(c) Fifty percent of the revenues remaining after allocation pursuant to subdivision (a), to the California Coastal Conservancy for research and programs related to improving the near-shore ocean ecosystem, including, but not limited to, program activities to reduce sea otter mortality. The programs may also address pathogens and water and wastewater treatment technologies.

18753. (a) This article shall remain in effect only until January 1 of the fifth taxable year following the first appearance of the California Sea Otter Fund on the tax return, and as of that date is repealed, unless a later enacted statute, that is enacted before the applicable date, deletes or extends that date.

(b) (1) By September 1 of the second calendar year beginning after the first taxable year the California Sea Otter Fund appears on a tax return and by September 1 of each subsequent calendar year that the California Sea Otter Fund appears on a tax return, the Franchise Tax Board shall do both of the following:

(A) Determine the minimum contribution amount required to be received during the next calendar year for the fund to appear on the tax return for the taxable year that includes that next calendar year.

(B) Determine whether the amount of contributions estimated to be received during the calendar year will equal or exceed the minimum contribution amount determined by the Franchise Tax Board for the calendar year pursuant to subparagraph (A). The Franchise Tax Board shall estimate the amount of contributions to be received by using the

actual amounts received and an estimate of the contributions that will be received by the end of that calendar year.

(2) If the Franchise Tax Board determines the amount of contributions estimated to be received during a calendar year will not equal or exceed the minimum contribution amount for the calendar year, this article is repealed with respect to taxable years beginning on or after January 1 of that calendar year.

(3) For purposes of this section, “minimum contribution amount” for a calendar year means two hundred fifty thousand dollars (\$250,000) for the second calendar year after the first taxable year for which the California Sea Otter Fund appears on the tax return, or the minimum contribution amount adjusted pursuant to subdivision (c).

(c) For each calendar year, beginning with the third calendar year that the California Sea Otter Fund appears on the tax return, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum contribution amount specified in subdivision (b) as follows:

(1) The minimum contribution amount for the calendar year shall be an amount equal to the product of the minimum contribution amount for the prior calendar year multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.