

AMENDED IN SENATE JUNE 21, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1743**

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**Introduced by Committee on Environmental Safety and Toxic  
Materials (Huffman (Chair), Smyth (Vice Chair), Eng, Evans,  
Feuer, Jeffries, and Nava)**

*(Principal coauthor: Senator Migden)*

*(Coauthor: Senator Perata)*

March 22, 2007

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~~An act to amend Section 13050 of, and to repeal Section 13051 of,  
the Water Code, relating to water. An act relating to San Quentin State  
Prison.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1743, as amended, Committee on Environmental Safety and  
Toxic Materials. ~~Porter-Cologne Water Quality Control Act: definitions.  
San Quentin State Prison: condemned inmate facilities.~~

*Existing law requires male state prison inmates who have been  
sentenced to death to be housed at San Quentin State Prison. An existing  
appropriation provided money for a new condemned inmate complex  
on that site.*

*This bill would make findings and declarations about the inadequacy  
of existing condemned inmate facilities, and the cost overruns of the  
proposed condemned inmate complex. The bill would prohibit the  
Department of Corrections and Rehabilitation from spending any money  
on the proposed condemned inmate complex at San Quentin State Prison  
until certain conditions are met. One of those conditions is the  
completion of an evaluation by the Bureau of State Audits on condemned  
inmate facility alternatives. Copies of the evaluation would be required*

to be distributed to certain committees of the Legislature by April 15, 2008.

~~Existing law, the Porter-Cologne Water Quality Control Act, establishes a statewide program for the control of the quality of all the waters in the state. For purposes of the act, existing law establishes the meanings of various terms.~~

~~This bill would make technical, nonsubstantive changes to the provisions of law that define those terms as used in the act.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-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) *Existing condemned inmate facilities at San Quentin State*  
4 *Prison do not meet the maximum security design criteria*  
5 *established by the Department of Corrections and Rehabilitation.*

6     (b) *In the Budget Act of 2003, two hundred twenty million*  
7 *dollars (\$220,000,000) was authorized for a new condemned*  
8 *inmate facility at San Quentin State Prison. The department's*  
9 *revised cost estimates reflect a 53 percent increase, even though*  
10 *the facility's proposed inmate capacity has actually been reduced*  
11 *by 25 percent from the initial authorization.*

12     (c) *Given rising construction costs and the history of*  
13 *underestimating costs for projects at the San Quentin State Prison*  
14 *site, total expenditures on the new condemned inmate complex*  
15 *could substantially exceed the three hundred thirty-six million five*  
16 *hundred thousand dollar (\$336,500,000) estimate.*

17     (d) *In their 2007–08 Judicial & Criminal Justice Budget*  
18 *Analysis, the Legislative Analyst's Office concluded that:*

19     (1) *The construction cost of the proposed condemned inmate*  
20 *complex, even if the department's new cost estimate is correct,*  
21 *would be three hundred thousand dollars (\$300,000) per bed, more*  
22 *than twice the cost of other high-security beds.*

23     (2) *In light of the various fiscal and operational problems with*  
24 *the project, the proposed condemned inmate complex at San*  
25 *Quentin State Prison should be cancelled and the remaining project*  
26 *funding be used to expand condemned inmate capacity elsewhere.*

1 (e) The Legislature should reevaluate whether the proposed  
2 condemned inmate complex at San Quentin State Prison is a  
3 prudent expenditure of taxpayer funds and whether, given all  
4 relevant fiscal, public safety, correctional officer and inmate safety,  
5 legal rights, and civil liberty considerations, there are better  
6 alternatives for housing male condemned inmates.

7 (f) The department owns 275 acres at the site of San Quentin  
8 State Prison, many of which are not actively used by the  
9 department. The proposed condemned inmate complex at San  
10 Quentin State Prison would be segregated from existing  
11 correctional facilities and occupy a large area in the southwestern  
12 portion of the department's property at San Quentin. As a result,  
13 its construction would foreclose opportunities for state partnership  
14 with local governments on noncorrectional, public uses of this  
15 land, including public transportation, health care, and affordable  
16 housing, including uses that could generate substantial revenues  
17 for the state. The state has not studied the alternative of  
18 constructing a condemned inmate complex at San Quentin State  
19 Prison in a manner that preserves the possibility for these  
20 noncorrectional uses in the southwestern portion of the San  
21 Quentin property.

22 (g) Identifying alternatives that obviate the need for a new  
23 condemned inmate complex occupying the southwestern portion  
24 of the San Quentin property could lead to potential savings in  
25 facility construction, and also preserve the state's ability to pursue  
26 the aforementioned noncorrectional uses of this portion of the San  
27 Quentin property while keeping the majority of the San Quentin  
28 property for correctional uses. This could produce substantial  
29 revenues for the state in addition to helping address local and  
30 regional transportation, health care, or affordable housing needs.

31 SEC. 2. The Department of Corrections and Rehabilitation  
32 shall not expend any money on the proposed condemned inmate  
33 complex at San Quentin State Prison until all of the following  
34 occur:

35 (a) The Evaluation of Condemned Inmate Facility Alternatives,  
36 has been completed as specified in Section 3 of this act.

37 (b) The Legislature, interested parties, and the public have had  
38 90 days to review that evaluation.

39 (c) The Legislature expressly authorized the expenditure of  
40 funds on that complex.

1 SEC. 3. (a) *The Bureau of State Audits shall complete an*  
 2 *Evaluation of Condemned Inmate Facility Alternatives. The*  
 3 *evaluation shall reflect the current legal requirement that the lethal*  
 4 *injection chamber remain at San Quentin State Prison. The*  
 5 *evaluation shall consider all of the following:*

6 (1) *A cost comparison between various alternatives, taking into*  
 7 *account capital outlay costs in addition to projected expenditures*  
 8 *on maintenance and operations.*

9 (2) *Use of prison facilities other than San Quentin State Prison*  
 10 *to meet male condemned inmate housing needs.*

11 (3) *Whether facilities can be constructed to house some or all*  
 12 *male condemned inmates at San Quentin in a manner that*  
 13 *preserves the possibility for noncorrectional uses in the*  
 14 *southwestern portion of the San Quentin State Prison property.*

15 (4) *Any alternatives that include housing condemned male*  
 16 *inmates at facilities other than San Quentin State Prison shall*  
 17 *meet the requirements of paragraphs (1) and (2) of subdivision*  
 18 *(c) of Section 3600 of the Penal Code.*

19 (5) *Access and proximity to counsel, medical care, and family.*

20 (6) *Concerns about housing condemned inmates in a location*  
 21 *separate from the site of execution.*

22 (7) *Difficulty finding qualified counsel to represent inmates in*  
 23 *habeas corpus proceedings.*

24 (8) *Costs associated with the distance between inmates, counsel,*  
 25 *medical care, and other relevant resources, particularly with*  
 26 *regard to the unique needs of condemned inmates.*

27 (9) *Compliance with relevant legal orders.*

28 (b) *Copies of the evaluation shall be distributed to the*  
 29 *membership of the Assembly and Senate Committees on Public*  
 30 *Safety no later than April 15, 2008.*

31 SECTION 1. ~~Section 13050 of the Water Code is amended to~~  
 32 ~~read:~~

33 ~~13050. As used in this division:~~

34 (a) ~~“Beneficial uses” of the waters of the state that may be~~  
 35 ~~protected against quality degradation include, but are not limited~~  
 36 ~~to, domestic, municipal, agricultural and industrial supply; power~~  
 37 ~~generation; recreation; aesthetic enjoyment; navigation; and~~  
 38 ~~preservation and enhancement of fish, wildlife, and other aquatic~~  
 39 ~~resources or preserves.~~

1 ~~(b) “Citizen or domiciliary” of the state includes a foreign~~  
2 ~~corporation having substantial business contacts in the state or~~  
3 ~~which is subject to service of process in this state.~~

4 ~~(c) “Contamination” means an impairment of the quality of the~~  
5 ~~waters of the state by waste to a degree which creates a hazard to~~  
6 ~~the public health through poisoning or through the spread of~~  
7 ~~disease. “Contamination” includes any equivalent effect resulting~~  
8 ~~from the disposal of waste, whether or not waters of the state are~~  
9 ~~affected.~~

10 ~~(d) (1) “Hazardous substance” means either of the following:~~

11 ~~(A) For discharge to surface waters, any substance determined~~  
12 ~~to be a hazardous substance pursuant to Section 311(b)(2) of the~~  
13 ~~Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).~~

14 ~~(B) For discharge to groundwater, any substance listed as a~~  
15 ~~hazardous waste or hazardous material pursuant to Section 25140~~  
16 ~~of the Health and Safety Code, without regard to whether the~~  
17 ~~substance is intended to be used, reused, or discarded, except that~~  
18 ~~“hazardous substance” does not include any substance excluded~~  
19 ~~from Section 311(b)(2) of the Federal Water Pollution Control Act~~  
20 ~~because it is within the scope of Section 311(a)(1) of that act.~~

21 ~~(2) “Hazardous substance” does not include any of the~~  
22 ~~following:~~

23 ~~(A) Nontoxic, nonflammable, and noncorrosive stormwater~~  
24 ~~runoff drained from underground vaults, chambers, or manholes~~  
25 ~~into gutters or storm sewers.~~

26 ~~(B) Any pesticide which is applied for agricultural purposes or~~  
27 ~~is applied in accordance with a cooperative agreement authorized~~  
28 ~~by Section 116180 of the Health and Safety Code, and is not~~  
29 ~~discharged accidentally or for purposes of disposal, the application~~  
30 ~~of which is in compliance with all applicable state and federal laws~~  
31 ~~and regulations.~~

32 ~~(C) Any discharge to surface water of a quantity less than a~~  
33 ~~reportable quantity as determined by regulations issued pursuant~~  
34 ~~to Section 311(b)(4) of the Federal Water Pollution Control Act.~~

35 ~~(D) Any discharge to land which results, or probably will result,~~  
36 ~~in a discharge to groundwater if the amount of the discharge to~~  
37 ~~land is less than a reportable quantity, as determined by regulations~~  
38 ~~adopted pursuant to Section 13271, for substances listed as~~  
39 ~~hazardous pursuant to Section 25140 of the Health and Safety~~  
40 ~~Code. No discharge shall be deemed a discharge of a reportable~~

1 quantity until regulations set a reportable quantity for the substance  
2 discharged.

3 (e) ~~“Injection well” means any bored, drilled, or driven shaft,~~  
4 ~~dug pit, or hole in the ground into which waste or fluid is~~  
5 ~~discharged, and any associated subsurface appurtenances, and the~~  
6 ~~depth of which is greater than the circumference of the shaft, pit,~~  
7 ~~or hole.~~

8 (f) ~~“Master recycling permit” means a permit issued to a supplier~~  
9 ~~or a distributor, or both, of recycled water, that includes waste~~  
10 ~~discharge requirements prescribed pursuant to Section 13263 and~~  
11 ~~water recycling requirements prescribed pursuant to Section~~  
12 ~~13523.1.~~

13 (g) (1) ~~“Mining waste” means all solid, semisolid, and liquid~~  
14 ~~waste materials from the extraction, beneficiation, and processing~~  
15 ~~of ores and minerals. Mining waste includes, but is not limited to,~~  
16 ~~soil, waste rock, and overburden, as defined in Section 2732 of~~  
17 ~~the Public Resources Code, and tailings, slag, and other processed~~  
18 ~~waste materials, including cementitious materials that are managed~~  
19 ~~at the cement manufacturing facility where the materials were~~  
20 ~~generated.~~

21 (2) ~~For the purposes of this subdivision, “cementitious material”~~  
22 ~~means cement, cement kiln dust, clinker, and clinker dust.~~

23 (h) ~~“Nuisance” means anything which meets all of the following~~  
24 ~~requirements:~~

25 (1) ~~Is injurious to health, or is indecent or offensive to the senses,~~  
26 ~~or an obstruction to the free use of property, so as to interfere with~~  
27 ~~the comfortable enjoyment of life or property.~~

28 (2) ~~Affects at the same time an entire community or~~  
29 ~~neighborhood, or any considerable number of persons, although~~  
30 ~~the extent of the annoyance or damage inflicted upon individuals~~  
31 ~~may be unequal.~~

32 (3) ~~Occurs during, or as a result of, the treatment or disposal of~~  
33 ~~wastes.~~

34 (i) ~~“Person” includes any city, county, district, the state, and~~  
35 ~~the United States, to the extent authorized by federal law.~~

36 (j) (1) ~~“Pollution” means an alteration of the quality of the~~  
37 ~~waters of the state by waste to a degree which unreasonably affects~~  
38 ~~either of the following:~~

39 (A) ~~The waters for beneficial uses.~~

40 (B) ~~Facilities which serve these beneficial uses.~~

1 ~~(2) “Pollution” may include “contamination.”~~

2 ~~(k) “Quality of the water” refers to chemical, physical,~~  
3 ~~biological, bacteriological, radiological, and other properties and~~  
4 ~~characteristics of water which affect its use.~~

5 ~~(l) “Recycled water” means water which, as a result of treatment~~  
6 ~~of waste, is suitable for a direct beneficial use or a controlled use~~  
7 ~~that would not otherwise occur and is therefor considered a~~  
8 ~~valuable resource.~~

9 ~~(m) “Regional board” means any California regional water~~  
10 ~~quality control board for a region as specified in Section 13200.~~

11 ~~(n) “State board” means the State Water Resources Control~~  
12 ~~Board.~~

13 ~~(o) “Waste” includes sewage and any and all other waste~~  
14 ~~substances, liquid, solid, gaseous, or radioactive, associated with~~  
15 ~~human habitation, or of human or animal origin, or from any~~  
16 ~~producing, manufacturing, or processing operation, including waste~~  
17 ~~placed within containers of whatever nature prior to, and for~~  
18 ~~purposes of, disposal.~~

19 ~~(p) “Water quality control” means the regulation of any activity~~  
20 ~~or factor which may affect the quality of the waters of the state~~  
21 ~~and includes the prevention and correction of water pollution and~~  
22 ~~nuisance.~~

23 ~~(q) “Water quality control plan” consists of a designation or~~  
24 ~~establishment for the waters within a specified area of all of the~~  
25 ~~following:~~

26 ~~(1) Beneficial uses to be protected.~~

27 ~~(2) Water quality objectives.~~

28 ~~(3) A program of implementation needed for achieving water~~  
29 ~~quality objectives.~~

30 ~~(r) “Water quality objectives” means the limits or levels of water~~  
31 ~~quality constituents or characteristics which are established for the~~  
32 ~~reasonable protection of beneficial uses of water or the prevention~~  
33 ~~of nuisance within a specific area.~~

34 ~~(s) “Waters of the state” means any surface water or~~  
35 ~~groundwater, including saline waters, within the boundaries of the~~  
36 ~~state.~~

37 ~~SEC. 2. Section 13051 of the Water Code is repealed.~~

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