

Senate Bill No. 310

CHAPTER 577

An act to add Chapter 27 (commencing with Section 16100) to Division 7 of the Water Code, relating to water quality.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 310, Ducheny. Water quality: stormwater and other runoff.

Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements for the discharge of stormwater in accordance with the federal national pollutant discharge elimination system (NPDES) permit program pursuant to the federal Clean Water Act and the Porter-Cologne Water Quality Control Act. Various programs finance regional water management planning.

This bill would authorize a county, city, or special district that is a permittee or copermitttee under an NPDES permit for a municipal separate storm sewer system to develop a watershed improvement plan that addresses major sources of pollutants in receiving water, stormwater, urban runoff, or other surface runoff pollution within the watershed or subwatershed to which the plan applies. The regional boards would be authorized to participate in the preparation of the watershed improvement plan. The regional boards would be required to review, and authorized to approve, a watershed improvement plan if they find that the proposed plan will facilitate compliance with water quality requirements. The entities that develop the plan that is submitted to a regional board for approval would be required to reimburse the regional board for its costs in accordance with a fee schedule adopted by the state board. The bill would authorize a county, city, or special district, or combination thereof, to impose fees on activities that generate or contribute to runoff, stormwater, or surface runoff pollution to pay the costs of the preparation of a watershed improvement plan or the implementation of a plan that is approved by a regional board if certain requirements are met. The bill would authorize a county, city, or special district, or combination thereof, to plan, design, implement, construct, operate, and maintain controls and facilities to improve water quality.

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

SECTION 1. Chapter 27 (commencing with Section 16100) is added to Division 7 of the Water Code, to read:

CHAPTER 27. CALIFORNIA WATERSHED IMPROVEMENT ACT OF 2009

16100. This chapter shall be known and may be cited as the California Watershed Improvement Act of 2009.

16101. (a) Each county, city, or special district that is a permittee or copermitee under a national pollutant discharge elimination system (NPDES) permit for municipal separate storm sewer systems may develop, either individually or jointly with one or more permittees or copermitees, a watershed improvement plan that addresses major sources of pollutants in receiving water, stormwater, urban runoff, or other surface runoff pollution within the watershed or subwatershed to which the plan applies. The principal purpose of a watershed improvement plan is to implement existing and future water quality requirements and regulations by, among other things, where appropriate, identifying opportunities for stormwater detention, infiltration, use of natural treatment systems, water recycling, reuse, and supply augmentation; and providing programs and measures designed to promote, maintain, or achieve compliance with water quality laws and regulations, including water quality standards and other requirements of statewide plans, regional water quality control plans, total maximum daily loads, and NPDES permits.

(b) The process of developing a watershed improvement plan shall be open and transparent, and shall be conducted consistent with all applicable open meeting laws. A county, city, special district, or combination thereof, shall solicit input from entities representing resource agencies, water agencies, sanitation districts, the environmental community, landowners, home builders, agricultural interests, and business and industry representatives.

(c) Each county, city, special district, or combination thereof shall notify the appropriate regional board of its intention to develop a watershed improvement plan. The regional board may, in its discretion, participate in the preparation of the plan. A watershed improvement plan shall be consistent with the regional board's water quality control plan.

(d) A watershed improvement plan shall include all of the following elements relevant to the waters within the watershed or subwatershed to which the plan applies:

(1) A description of the watershed or subwatershed improvement plan area, the rivers, streams, or manmade drainage channels within the plan area, the agencies with regulatory jurisdiction over matters to be addressed in the plan, the relevant receiving waters within or downstream from the plan area, and the county, city, special district, or combination thereof, participating in the plan.

(2) A description of the proposed facilities and actions that will improve the protection and enhancement of water quality and the designated beneficial uses of waters of the state, consistent with water quality laws and regulations.

(3) Recommendations for appropriate action by any entity, public or private, to facilitate achievement of, or consistency with, water quality

objectives, standards, total maximum daily loads, or other water quality laws, regulations, standards, or requirements, a time schedule for the actions to be taken, and a description of appropriate measurement and monitoring to be undertaken to determine improvement in water quality.

(4) A coordinated economic analysis and financing plan that identifies the costs, effectiveness, and benefits of water quality improvements specified in the watershed improvement plan, and, where feasible, incorporates user-based and cost recovery approaches to financing, which place the cost of managing and treating surface runoff pollution on the generators of the pollutants.

(5) To the extent applicable, a description of regional best management practices, watershed-based natural treatment systems, low-flow diversion systems, stormwater capture, urban runoff capture, other measures constituting structural treatment best management practices, pollution prevention measures, low-impact development strategies, and site design, source control, and treatment control best management practices to promote improved water quality.

(6) A description of the proposed structure, operations, powers, and duties of the implementing entity for the watershed improvement plan.

16102. (a) A regional board shall review, in accordance with the reimbursement requirement described in subdivision (c), a watershed improvement plan developed pursuant to Section 16101 and may approve the plan, including any appropriate conditions to the approval, if the regional board finds that the proposed watershed improvement plan will facilitate compliance with water quality requirements. A regional board's review and approval of the watershed improvement plan shall be limited to components described in paragraphs (1), (2), (3), and (5) of subdivision (d) of Section 16101.

(b) A regional board may not approve a proposed watershed improvement plan that includes a geographical area included in an existing approved watershed improvement plan unless the regional board determines that it is infeasible to amend either the proposed watershed improvement plan or the approved watershed improvement plan to achieve the purposes of this chapter.

(c) The entity or entities that develop a watershed improvement plan that is submitted to the regional board for approval shall reimburse the regional board for its costs, including the costs to review and oversee the implementation of the plan, if nonstate funds are not available to cover the costs of the review and oversight. For the purpose of this paragraph, the state board shall adopt a fee schedule by emergency regulation in the manner prescribed in paragraph (2) of subdivision (f) of Section 13260. Fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund established by Section 13260.

(d) A regional board may, if it deems appropriate, utilize provisions of approved watershed improvement plans to promote compliance with one or more of the regional board's regulatory plans or programs.

(e) Unless a regional board incorporates the provisions of a watershed improvement plan into waste discharge requirements issued to a permittee, the implementation of a watershed improvement plan by a permittee shall not be deemed to be compliance with those waste discharge requirements.

16103. (a) In addition to making use of other financing mechanisms that are available to local agencies to fund watershed improvement plans and plan measures and facilities, a county, city, special district, or combination thereof may impose fees on activities that generate or contribute to runoff, stormwater, or surface runoff pollution, to pay the costs of the preparation of a watershed improvement plan, and the implementation of a watershed improvement plan if all of the following requirements are met:

(1) The regional board has approved the watershed improvement plan.

(2) The entity or entities that develop the watershed improvement plan make a finding, supported by substantial evidence, that the fee is reasonably related to the cost of mitigating the actual or anticipated past, present, or future adverse effects of the activities of the feepayer. "Activities," for the purposes of this paragraph, means the operations and existing structures and improvements subject to regulation under an NPDES permit for municipal separate storm sewer systems.

(3) The fee is not imposed solely as an incident of property ownership.

(b) A county, city, special district, or combination thereof may plan, design, implement, construct, operate, and maintain controls and facilities to improve water quality, including controls and facilities related to the infiltration, retention and reuse, diversion, interception, filtration, or collection of surface runoff, including urban runoff, stormwater, and other forms of runoff, the treatment of pollutants in runoff or other waters subject to water quality regulatory requirements, the return of diverted and treated waters to receiving water bodies, the enhancement of beneficial uses of waters of the state, or the beneficial use or reuse of diverted waters.

(c) The fees authorized under subdivision (a) may be imposed as user-based or regulatory fees consistent with this chapter.

16104. Nothing in this chapter alters requirements that govern the diversion of water.