

Senate Bill No. 900

CHAPTER 135

An act to amend Section 14058 of, to add Section 13459.5 to, and to add Division 24 (commencing with Section 78500) to, the Water Code, relating to financing water programs by providing the funds necessary therefor through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 11, 1996. Filed with
Secretary of State July 11, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 900, Costa. Water bonds.

(1) Under existing law, various bond acts have been approved by the voters to provide funds for water projects, facilities, and programs.

This bill would enact the Safe, Clean, Reliable Water Supply Act, which, if adopted, would authorize for the purposes of financing prescribed water programs, the issuance, pursuant to the State General Obligation Bond Law, of bonds in the amount of \$995,000,000. The bill would also provide for the use of bond funds from the Water Conservation and Water Quality Bond Law of 1986 for drainage water management to be undertaken in accordance with this bond act and would revise requirements relating to the disposition of funds that are repaid to the state pursuant to contracts entered into in accordance with the Clean Water and Water Reclamation Bond Law of 1988.

The bill would provide for the submission of this bond act, and the changes in the 1986 and 1988 bond laws, to the voters at the November 5, 1996, general election.

The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Division 24 (commencing with Section 78500) is added to the Water Code, to read:

screening of diversions shall be given to projects, and projects within programs, identified in the Central Valley Project Improvement Act (P.L. 102-575) for which deadlines have been established by state or federal agencies, or by a state or federal court. Any preference established under this paragraph shall be revised if the deadlines are extended or eliminated.

(2) To pay for administrative costs incurred in connection with the implementation of this section by the department and the Department of Fish and Game related to fish and wildlife restoration measures undertaken pursuant to Section 3406 of the Central Valley Project Improvement Act (P.L. 102-575), as follows:

(A) Not more than 3 percent of the total amount deposited in the subaccount for the use of the department may be used to pay the costs incurred in connection with the administration of this article by the department.

(B) Not more than 3 percent of the total amount deposited in the subaccount for the use of the Department of Fish and Game may be used to pay the costs incurred in connection with the administration of this article by the Department of Fish and Game.

Article 3. Bay-Delta Agreement Program

78535. (a) There is hereby created in the account the Bay-Delta Agreement Subaccount.

(b) For the purposes of this article, "subaccount" means the Bay-Delta Agreement Subaccount created by subdivision (a).

78535.5. The sum of sixty million dollars (\$60,000,000) is hereby transferred from the account to the subaccount for the purpose of implementing this article.

78536. Notwithstanding Section 13340 of the Government Code, the money in the subaccount is hereby continuously appropriated, without regard to fiscal years, to the Resources Agency, to pay for the administration of this article and for non-flow-related projects called for in the Water Quality Control Plan for the Bay-Delta, adopted by the board in Resolution No. 95-24, and as it may be amended. Those projects are known as "Category III" activities called for in the "Principles for Agreement on Bay-Delta Standards Between the State of California and the Federal Government," dated December 15, 1994.

78536.5. The Secretary of the Resources Agency shall carry out this article in accordance with procedures established by CALFED for the purposes of undertaking Category III activities and other ecosystem restoration programs until the Legislature, by statute, authorizes another entity that is recommended by CALFED, to carry out this article.

78537. The state shall, to the greatest extent possible, secure federal and nonfederal matching funds to implement this article.

78538. Not more than 3 percent of the total amount deposited in the subaccount may be used to pay the costs incurred in connection with the administration of this article.

Article 4. Delta Levee Rehabilitation Program

78540. (a) There is hereby created in the account the Delta Levee Rehabilitation Subaccount.

(b) For the purposes of this article, "subaccount" means the Delta Levee Rehabilitation Subaccount created by subdivision (a).

78540.5. The sum of twenty-five million dollars (\$25,000,000) is hereby transferred from the account to the subaccount for the purpose of implementing this article.

78541. Notwithstanding Section 13340 of the Government Code, the money in the subaccount is hereby continuously appropriated, without regard to fiscal years, to the department, as follows:

(a) Twelve million five hundred thousand dollars (\$12,500,000) for local assistance under the delta levee maintenance subventions program under Part 9 (commencing with Section 12980) of Division 6, and for the administration of that assistance.

(b) Twelve million five hundred thousand dollars (\$12,500,000) for special flood protection projects under Chapter 2 (commencing with Section 12310) of Part 4.8 of Division 6, subsidence studies and monitoring, and for the administration of this subdivision. Allocation of these funds shall be for flood protection projects on Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb Islands, and at other locations in the delta.

78542. The expenditure of funds under this article is subject to Chapter 1.5 (commencing with Section 12306) of Part 4.8 of Division 6.

78543. (a) No expenditure of funds may be made under this article unless the Department of Fish and Game makes a written determination as part of its review and approval of a plan or project pursuant to Section 12314 or 12987 that the proposed expenditures are consistent with a net long-term habitat improvement program and have a net benefit for aquatic species in the delta. The Department of Fish and Game shall make its determination in a reasonable and timely manner following the submission of the project or plan to that department. For the purposes of this article, an expenditure may include more than one levee project or plan.

(b) The memorandum of understanding entered into pursuant to Section 12307 shall be amended to require, in accordance with this section, that projects or plans be consistent with a net long-term habitat improvement program in the delta. The memorandum of understanding shall define the term "net long-term habitat improvement program in the delta" for purposes of this section. The memorandum of understanding in effect prior to the amendment

78562. Notwithstanding Section 13340 of the Government Code, the money in the subaccount is hereby continuously appropriated, without regard to fiscal years, to the Department of Parks and Recreation to provide for, and improve, public access to, and to maximize public recreational opportunities on, the lands and waters of the delta in a way that is consistent with existing uses of the islands, sound resource conservation principles, and appropriate protection for the rights of private property owners, and for the administration of this article.

78564. The Department of Parks and Recreation may use funds in the subaccount for grants to local public agencies and nonprofit organizations for the purposes of acquiring fee title, development rights, easements, or other interests in land located in the delta to provide for, or improve, public access in the delta. The amount of any grant and the degree of local participation shall be determined by the fiscal resources of the grant applicant, the degree of public benefit provided by the proposed project, and other factors prescribed by the Department of Parks and Recreation.

78565. Any acquisition pursuant to this article shall be from willing sellers.

78566. The Department of Parks and Recreation may adopt regulations to carry out this article.

78568. Not more than 3 percent of the total amount deposited in the subaccount may be used to pay the costs incurred in connection with the administration of this article.

Article 7. - CALFED Bay-Delta Program

78570. (a) There is hereby created in the account the CALFED Subaccount.

(b) For the purposes of this article, "subaccount" means the CALFED Subaccount created by subdivision (a).

78571. The sum of three million dollars (\$3,000,000) is hereby transferred from the account to the subaccount for the purposes of Section 78572.

78572. Notwithstanding Section 13340 of the Government Code, the money in the subaccount is continuously appropriated, without regard to fiscal years, to the department, for the purpose of paying for the state's share of costs incurred in connection with the CALFED Bay-Delta Program.

(a) Chapter 4 (commencing with Section 1300) and Chapter 4.1 (commencing with Section 1385) of Division 2 of the Fish and Game Code.

(b) Chapter 5 (commencing with Section 31200), Chapter 6 (commencing with Section 31251), and Chapter 9 (commencing with Section 31400), of Division 21 of the Public Resources Code.

(c) Division 22.5 (commencing with Section 32500) of the Public Resources Code.

(d) Urban river park acquisition and restoration projects undertaken pursuant to Division 23 (commencing with Section 33000) of the Public Resources Code.

(e) River parkway projects undertaken by a state agency, city, county, city and county, or pursuant to a joint powers agreement between two or more of these entities.

78682.4. At least 50 percent of the funds in the subaccount shall be used for projects that are located in, or in close proximity to, major metropolitan areas.

78682.6. Not more than 3 percent of the total amount deposited in the subaccount may be used to pay the costs incurred in connection with the administration of this article.

CHAPTER 7. CALFED BAY-DELTA ECOSYSTEM RESTORATION PROGRAM

78684. Unless the context otherwise requires, all of the following definitions govern the construction of this chapter.

(a) "Account" means the Bay-Delta Ecosystem Restoration Account created by Section 78684.6.

(b) "Bay-delta ecosystem" means the bay-delta and its tributary watersheds.

(c) "CALFED Bay-Delta Program" or "program" means the undertaking by CALFED to develop, by means of the programmatic EIS/EIR, a preferred alternative of programs, actions, projects, and related activities which will provide solutions to identified problem areas related to the bay-delta ecosystem.

(d) (1) "Eligible project" means a project or program, or an element of a project or program, identified in the final programmatic EIS/EIR, that is intended to improve and increase aquatic and terrestrial habitats and improve ecological functions in the bay-delta ecosystem.

(2) Eligible projects may include, but are not limited to, projects or programs with any of the following purposes:

(A) The protection and enhancement of existing habitat.

(B) The restoration of tidal, shallow water, riparian, riverine, wetlands, and other habitats.

(C) The expansion of wetlands protection programs.

(D) The acquisition of water for instream flow improvements.

- (E) Improved habitat management.
- (F) Improved management of introduced species.
- (G) Improved fish protection and management.
- (3) Eligible projects shall not include any of the following:
 - (A) Any water conveyance facilities.
 - (B) Any component of the CALFED Bay-Delta Program that is not identified in the final programmatic EIS/EIR as a component of the ecosystem restoration element.

(C) Any programs or projects undertaken to offset or avoid adverse environmental conditions which the final programmatic EIS/EIR determines would be caused by the construction, operation, or implementation of any element of the CALFED Bay-Delta Program other than the ecosystem restoration element.

(C) Any programs or projects undertaken to offset or avoid adverse environmental conditions which the final programmatic EIS/EIR determines would be caused by the construction, operation, or implementation of any element of the CALFED Bay-Delta Program other than the ecosystem restoration element.

(e) "Programmatic EIS/EIR" means the programmatic environmental impact statement/environmental impact report that is prepared by CALFED for the CALFED Bay-Delta Program.

78684.2. The Legislature hereby finds and declares all of the following:

(a) CALFED is in the process of preparing a programmatic EIS/EIR for a long-term comprehensive plan that will resolve problems related to ecosystem restoration, water quality, water supplies, and water management for beneficial uses of the bay-delta ecosystem, and system integrity.

(b) The CALFED Bay-Delta Program, to the extent that it relates to restoration in the bay-delta ecosystem, is of statewide and national importance. The state should participate in the funding of eligible projects as a part of its ongoing program to improve environmental conditions in the bay-delta ecosystem.

(c) The programmatic EIS/EIR will include a schedule for funding and implementing all elements of the long-term comprehensive plan.

(d) The CALFED Bay-Delta Program elements will achieve balanced solutions in all identified problem areas, including the ecosystem, water supply, water quality, and system integrity.

78684.4. This chapter does not authorize implementation of the CALFED Bay-Delta Program or any element of the program. The implementation of the CALFED Bay-Delta Program, or any element of the program, shall only be undertaken pursuant to authority provided by law other than this division.

78684.6. (a) The Bay-Delta Ecosystem Restoration Account is hereby created in the fund for the purpose of funding eligible projects. The sum of three hundred ninety million dollars (\$390,000,000) is hereby transferred from the fund to the account.

(b) Notwithstanding Section 13340 of the Government Code, the money in the account is hereby continuously appropriated, without regard to fiscal years, to the Resources Agency for the purposes set forth in this chapter, and for the administration of this chapter.

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78684.8. The Secretary of the Resources Agency shall carry out this chapter in accordance with procedures established by CALFED for the purposes of ecosystem restoration until the Legislature, by statute, authorizes another entity, that is recommended by CALFED, to carry out this chapter.

78684.10. No funds in the account may be expended until all of the following conditions have been met:

(a) The final programmatic EIS/EIR has been certified by the state lead agency and a notice of determination has been issued as required by Division 13 (commencing with Section 21000) of the Public Resources Code.

(b) The identical final programmatic EIS/EIR has been filed by the federal lead agencies with the Environmental Protection Agency, the required notice has been published in the Federal Register, and there has been federal approval of the identical program approved by the state.

(c) A cost-sharing agreement has been entered into by the State of California and the United States, pursuant to which the United States agrees to share in the costs of eligible projects.

78684.12. Due to the importance of issuing permits and otherwise expediting all elements of the CALFED Bay-Delta Program in a timely and balanced manner, the following procedures apply to the use of funds authorized by this chapter:

(a) After the requirements set forth in Section 78684.10 are met, funds in the account shall become available for use in accordance with the schedule for eligible projects set forth in the final programmatic EIS/EIR, unless and until the Secretary of the Resources Agency determines that the schedule established in the final programmatic EIS/EIR has not been substantially adhered to.

(b) Prior to November 15 of each year, the Secretary of the Resources Agency, in consultation with state and federal CALFED representatives and other interested persons and agencies, shall review adherence to the schedule.

(c) The absence of funding from nonfederal or nonstate sources shall not be a basis for a determination that the schedule has not been adhered to.

(d) If, at the conclusion of each annual review, the Secretary of the Resources Agency determines that the schedule established in the final programmatic EIS/EIR, or a revised schedule prepared pursuant to this subdivision, has not been substantially adhered to, the secretary, after notice to, and consultation with, state and federal CALFED representatives and other interested persons and agencies, shall prepare a revised schedule that ensures that balanced solutions in all identified problem areas, including ecosystem restoration, water supply, water quality, and system integrity are achieved, consistent with the intent of the final programmatic EIS/EIR. Funds shall be available for expenditure unless a revised schedule has not

been developed within six months from the date on which the secretary determines that the prior schedule has not been substantially adhered to. Upon the preparation of any revised schedule under this subdivision, funds shall be expended in accordance with that revised schedule.

(e) Specific project and program decisions involving the expenditure of funds in the account shall be made in accordance with the procedures established by CALFED for the ecosystem restoration program.

78684.13. On or before December 15 of each year, the Secretary of the Resources Agency shall submit an annual report to the Legislature that describes the status of the implementation of all elements of the CALFED Bay-Delta Program, any determinations made by the secretary pursuant to subdivisions (b) and (d) of Section 74684.12, and other significant scheduling issues. The report also shall include a detailed accounting of expenditures, descriptions of programs for which expenditures have been made, and a schedule of anticipated expenditures for the next year.

78684.14. Not more than 3 percent of the total amount deposited in the account may be used to pay the costs incurred in connection with the administration of this chapter.

CHAPTER 8. FLOOD CONTROL AND PREVENTION PROGRAM

Article 1. Definitions

78686. Unless the context otherwise requires, as used in this chapter, "account" means the Flood Control and Prevention Account created by Section 78686.10.

Article 2. Flood Control and Prevention Program

78686.10. The Flood Control and Prevention Account is hereby created in the fund. The sum of sixty million dollars (\$60,000,000) is hereby transferred from the fund to the account.

78686.12. (a) Notwithstanding Section 13340 of the Government Code, the money in the account is hereby continuously appropriated, without regard to fiscal years, to the department for the purposes set forth in subdivision (b).

(b) (1) The money in the account shall be used to pay for the state's share of the nonfederal costs of flood control and flood prevention projects that have been adopted and authorized in accordance with one or more of the following provisions of law:

(A) The State Water Resources Law of 1945 (Chapter 1 (commencing with Section 12570) and Chapter 2 (commencing with Section 12630) of Part 6 of Division 6).

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