

Date of Hearing: May 19, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 377 (Robert Rivas) – As Amended April 13, 2021

Policy Committee: Environmental Safety and Toxic Materials Vote: 5 - 3

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill requires the State Water Resources Control Board (State Water Board) and regional boards, by January 1, 2025, to evaluate impaired state surface waters and report to the Legislature a plan to bring all water segments into attainment by January 1, 2050. This bill requires the plan to include total maximum daily load (tmdl) compliance schedules as they existed on January 1, 2021, and prohibits the report from extending the existing compliance schedules. The report is required to be updated with progress summaries every five years until January 1, 2050.

Additionally, this bill:

- 1) Creates the Waterway Recovery Account (WRA) in the Waste Discharge Permit Fund and authorizes WRA funds to be available for the State Water Board, upon appropriation by the Legislature, to expend to bring impaired water segments into attainment.
- 2) Requires, by January 1, 2026, subject to legislative act, 50% of the annual proceeds of the State Water Pollution Cleanup and Abatement Account to be annually transferred to the WRA.
- 3) Authorizes funds in the WRA to be expended by the State Water Board only for the following:
 - a) Restoration projects that improve water quality, including supplemental environmental water projects.
 - b) Best management practice research innovation and incentives.
 - c) Source control programs.
 - d) Identifying nonfilers.
 - e) Source identification of unknown sources of impairment.
 - f) Competitive grants to fund projects and programs for municipal separate storm sewer system permit compliance requirements that would prevent or remediate pollutants.
 - g) Costs of investigation, enforcement, attorney staff and other staff associated with preparing for or attending a hearing in an administrative enforcement action.
- 4) Requires an enforcement action taken pursuant to this bill to result in sufficient penalties, conditions and orders to ensure the person subject to the enforcement action is no longer causing or contributing to the exceedance in a surface water quality standard.

- 5) Requires a discharger to remain liable for ongoing water quality violations until sampling demonstrates that the discharge is no longer causing or contributing to the exceedance in a surface water of the state.
- 6) Requires penalties obtained pursuant to the prioritization of water quality standards to be deposited into the WRA.
- 7) Requires the State Water Board and regional water boards to include, in the penalty recovery, all costs of investigation, enforcement, attorney staff and other staff associated with an administrative enforcement hearing.
- 8) Requires costs recovered pursuant to prioritization of water quality standards to be available, upon appropriation by the Legislature, for the State Water Board to expend for additional enforcement only.

FISCAL EFFECT:

The State Water Board estimates, at a minimum, an ongoing annual need for an \$7.4 million to fund 37 positions \$7.4 million to fulfill the requirements of AB 377. Of the 37 new positions, 27 (\$5.4 million) will be required for increased demands on technical staff, and ten (\$2 million) will be required for increased demands on enforcement staff.

- 1) The appropriation of 50% of the State Water Pollution Cleanup and Abatement Account to a proposed WRA is problematic in several respects.

First, funds from the Cleanup and Abatement Account would be insufficient to cover the costs of this bill. The account is comprised from revenue streams that cannot be expended elsewhere. For example, the account acts as a clearing account for Site Cleanup Program staff costs until those costs are recovered from responsible parties. Unfortunately the bill as written does not distinguish between funds available for reassignment and funds not available for expenditure on other programs. The account currently averages \$6 million annually in funds available for expenditure, independent of other requirements.

Second, funds expended from the proposed WRA as required by the bill would result in limited water quality improvement. A significant majority of expended funds would be directed towards the creation and maintenance of a water quality attainment plan and report to the legislature, without an implementation requirement. Enforcement action as a result of this bill would be limited to existing impaired water bodies.

Third, available funds deposited into the Cleanup and Abatement Account have historically been continuously appropriated to the regional water boards for emergency response, in the event of a major wildfire, spill, earthquake or other disaster.

COMMENTS:

1) **Purpose.** According to the author:

In 1972, Congress passed the Clean Water Act, which set a goal of restoring and maintaining clean water in all of the nation's rivers, lakes, wetlands, and other waterways by 1985. Unfortunately, five decades later, 95% of waterways in California are still polluted, or "impaired," by discharges of chemicals, sediment, or other materials into those waterways. The causes of impairment can vary greatly. A stream in the Sierra Nevada, for example, might be impaired by arsenic pollution from an abandoned mine upstream. Disadvantaged communities in the Fresno area, meanwhile, are forced to get a significant portion of their drinking water from a reservoir contaminated with mercury because the nearby San Joaquin River – which many residents also rely on for subsistence fishing – is even more polluted with mercury, pesticides, and hazardous levels of nutrients.

AB 377, the California Clean Water Act, will put the state back on track to eliminate impaired waterways and make all waters statewide suitable for conversion to drinking water, swimmable, and fishable by 2050. Specifically, the California Clean Water Act will require the State and Regional Water Boards to close permit loopholes, ensure that all dischargers are in compliance with water quality standards, and direct a larger proportion of existing funding toward cleaning up impaired waterways. The effects of this bill will be especially significant in disadvantaged communities, where water is disproportionately likely to be polluted or even undrinkable.

2) **Background.** The State Water Board and regional water boards enforce the pollution control and cleanup requirements established for discharges and contaminated sites. When violations of regulatory requirements are detected, enforcement actions of varying types and levels of stringency are taken. For the most serious violations, penalties are often imposed. The State Water Board also collaborates with federal, state and local law enforcement, as well as other environmental agencies, to address violations. In all cases, the principal goal of enforcement is to encourage compliance with requirements so that water quality is protected. According to the State Water Board during Fiscal Year 2019-2020, there were approximately 3,820 enforcement actions, with approximately \$12 million in penalties assessed. Of this amount, approximately \$3.6 million in penalties were for National Pollution Discharge Elimination System (NPDES) wastewater or NPDES stormwater violations.

According to the State Water Board, 1,357 of the 2,623 segments of water bodies in California contain harmful levels of one or more types of pollutants, such as bacteria, metals, and pesticides. Excessive amounts of these pollutants can detrimentally affect the environment, including the health of humans and aquatic life. For example, high levels of certain types of bacteria in a water body can cause serious illnesses, such as gastrointestinal illnesses, respiratory illnesses and skin infections in people who come into contact with the water body.

Local Government Costs? Most local governments are already facing funding gaps of hundreds of millions of dollars a year under existing permit conditions, with cumulative gaps over the next twenty years in the range of billions of dollars. The new local costs associated with this bill are primarily driven by TMDLs, which this bill appears to require for all water quality standards. Modifying compliance terms in permits will greatly add to local costs, and increase funding gaps.

Below are examples of current funding gaps in communities with dedicated funding sources. This bill will exacerbate those gaps and increase costs by redefining compliance, subjecting local governments to third-party lawsuits, and subjecting communities to fines.

The existing TMDLs in the Los Angeles region are expected to require expenditures of \$20 billion over 20 years. This figure does not include annual operations and maintenance costs or the cost of implementing the full stormwater program. Voters approved a local measure that provides \$285 million per year, leaving a \$715 million annual funding gap, before implementation of this bill. Although it is not possible to quantify exactly, this bill is likely to add billions, if not tens of billions to the costs of compliance.

In San Mateo County, the existing TMDLs for polychlorinated biphenyls (PCBs) and mercury will require capital expenditures of \$750 million to \$1 billion and up to \$50 million annually for operating expenditures. The annual funding gap is \$35 million before implementation of this bill. This bill will likely add hundreds of millions to the costs of compliance.

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