

## LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, \_\_\_\_\_.

General Subject: California Endangered Species Act; permit application fees; penalties.

(1) The California Endangered Species Act requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species, and requires the department to recommend, and the commission to adopt, criteria for determining if a species is endangered or threatened. The act prohibits the taking of an endangered, threatened, or candidate species, except as specified. Under the act, the department may authorize the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated.

This bill would require the department to collect a permit application fee for processing applications for specified permits issued by the department to take a species listed as candidate, threatened, or endangered. The bill would require the department to assess the permit application fee according to a graduated fee schedule based on the cost of the project and whether the project uses a department approved conservation



or mitigation bank to fulfill mitigation obligations. The bill would create the Endangered Species Permitting Account and would require the permit application fees collected by the department to be deposited in the account and used upon appropriation to pay the department's cost of processing permit applications, permit development, and compliance monitoring. The bill would make funds deposited in the account available to the department, upon appropriation by the Legislature, for those purposes and for administering and implementing the California Endangered Species Act.

(2) Under existing law, a violation of the California Endangered Species Act is a misdemeanor subject to the punishment of a fine of not more than \$5,000 or imprisonment in the county jail for not more than one year, or both the fine and imprisonment.

This bill would increase the punishment of a violation of the prohibition against taking an endangered, threatened, or candidate species to a fine of not less than \$25,000 or more than \$50,000, imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. The bill would require one half of any fine or forfeiture imposed for a violation of the take prohibition or any other law of the California Endangered Species Act to be deposited in the county treasury of the county in which the violation occurred and would require the other half to be deposited in the Endangered Species Permitting Account.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



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An act to amend Sections 12157 and 12159.5 of, and to add Sections 2081.2 and 12008.1 to, the Fish and Game Code, and to amend Section 258 of the Welfare and Institutions Code, relating to fish and wildlife.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2081.2 is added to the Fish and Game Code, to read:

2081.2. (a) (1) For the purposes of this section, the following terms have the following meanings:

(A) "Permit" means any authorization issued by the department pursuant to this article to take a species listed by this chapter as candidate, threatened, or endangered.

(B) "Permittee" includes any individual, firm, association, organization, partnership, business, trust, corporation, limited liability company, district, city, county, city and county, town, federal agency, and the state who applies for or who has received a permit pursuant to this article.

(C) "Project" has the same meaning as defined in Section 21065 of the Public Resources Code.

(D) "Project cost" means the total direct and indirect project expenses that include, but are not limited to, labor, equipment, permanent materials and supplies, subcontracts, permits and licenses, overhead, and miscellaneous costs.

(b) The department shall collect a permit application fee for processing a permit application submitted pursuant to this article at the time the permit application is submitted to the department. Notwithstanding Section 2098, upon appropriation to the department from the Endangered Species Permitting Account, the department shall use the permit application fee to pay for all or a portion of the department's cost of processing permit applications, permit development, and compliance monitoring pursuant to this article.



(c) The department shall assess the permit application fee as follows, subject to subdivision (f):

(1) For a project, regardless of estimated project cost, that is subject only to Section 2080.1, Section 2080.3, or Section 2080.4, the department shall assess either of the following amounts:

(A) Seven thousand five hundred dollars (\$7,500).

(B) Six thousand dollars (\$6,000) if the project uses a department approved conservation or mitigation bank to fulfill mitigation obligations pursuant to this article.

(2) For a project where the estimated project cost is less than one hundred thousand dollars (\$100,000), the department shall assess either of the following amounts:

(A) Seven thousand five hundred dollars (\$7,500).

(B) Six thousand dollars (\$6,000) if the project uses a department approved conservation or mitigation bank to fulfill mitigation obligations pursuant to this article.

(3) For a project where the estimated project cost is one hundred thousand dollars (\$100,000) or more but less than five hundred thousand dollars (\$500,000), the department shall assess either of the following amounts:

(A) Fifteen thousand dollars (\$15,000).

(B) Twelve thousand dollars (\$12,000) if the project uses a department approved conservation or mitigation bank to fulfill mitigation obligations pursuant to this article.

(4) For a project where the estimated project cost is five hundred thousand dollars (\$500,000) or more, the department shall assess either of the following amounts:

(A) Thirty thousand dollars (\$30,000).



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(B) Twenty-four thousand dollars (\$24,000) if the project uses a department approved conservation or mitigation bank to fulfill mitigation obligations pursuant to this article.

(5) The department shall collect a fee of seven thousand five hundred dollars (\$7,500) for processing permit amendments that the department has determined are minor as defined in regulation or fifteen thousand dollars (\$15,000) for processing permit amendments that the department has determined are major as defined in regulation.

(d) (1) If the permit or amendment application fee paid pursuant to subdivision (c) is determined by the department to be insufficient to complete permitting work due to the complexity of a project or the potential effects of a project, the department shall collect an additional fee of up to ten thousand dollars (\$10,000) from the permittee to pay for its estimated costs. Upon its determination, the department shall notify the permittee of the reasons why an additional fee is necessary and the estimated amount of the additional fee.

(2) The additional fee collected pursuant to paragraph (1) shall not exceed an amount that, when added to the fee paid pursuant to subdivision (c), equals thirty-five thousand dollars (\$35,000). The department shall collect the additional fee before a final decision on the application by the department.

(e) (1) For an application submitted to the department pursuant to this article on or after the effective date of this section, the department shall collect the permit application fee at the time the permit application is submitted. The department shall not deem the application complete until it has collected the permit application fee. A



permit application submitted or deemed complete prior to the effective date of this section shall not be subject to fees established pursuant to this section.

(2) If a permit or amendment application is withdrawn within 30 days after paying the permit or amendment application fee, the department shall refund any unused portion of the fee to the permittee.

(3) If a permit or amendment application is withdrawn after 30 days of paying the permit or amendment application fee, the department shall not refund any portion of the fee to the permittee.

(f) (1) The department shall adjust the fees in this section pursuant to Section 713.

(2) The Legislature finds that all revenues generated under this section and used for the purposes for which they were imposed are not subject to Article XIII B of the California Constitution.

(3) The department, at least every five years, shall analyze application fees pursuant to Section 713 to ensure the appropriate fee amounts are charged.

(g) Fees paid to the department pursuant to this section shall be deposited in the Endangered Species Permitting Account, which is hereby established in the Fish and Game Preservation Fund. Notwithstanding Section 2098, funds in the account shall be available to the department, upon appropriation by the Legislature, for the purposes of administering and implementing this chapter, except that fee moneys collected pursuant to this section shall only be used for the purposes of this article.

SEC. 2. Section 12008.1 is added to the Fish and Game Code, to read:



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12008.1. (a) Notwithstanding Section 12002 or Section 12008, the punishment for any violation of Section 2080 or 2085 is a fine of not less than twenty-five thousand dollars (\$25,000) or more than fifty thousand dollars (\$50,000) for each violation, imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) Notwithstanding any other law, the moneys collected from any fine or forfeiture imposed or collected for violating Chapter 1.5 (commencing with Section 2050) of Division 3 shall be deposited as follows:

(1) One-half in the Endangered Species Permitting Account established pursuant to Section 2081.2.

(2) One-half in the county treasury of the county in which the violation occurred. The board of supervisors shall first use revenues pursuant to this subdivision to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation. Any excess revenues may be expended in accordance with Section 13103.

SEC. 3. Section 12157 of the Fish and Game Code is amended to read:

12157. (a) Except as provided in subdivision (b), the judge before whom any person is tried for a violation of any provision of this code, or regulation adopted pursuant thereto, may, upon the conviction of the person tried, order the forfeiture of any device or apparatus that is designed to be, or is capable of being, used to take birds, mammals, fish, reptiles, or amphibia and that was used in committing the offense charged.



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(b) The judge shall, if the offense is punishable under Section 12008 or 12008.1 of this code or under subdivision (c) of Section 597 of the Penal Code, order the forfeiture of any device or apparatus that is used in committing the offense, including, but not limited to, any vehicle that is used or intended for use in delivering, importing, or exporting any unlawfully taken, imported, or purchased species.

(c) (1) The judge may, for conviction of a violation of any of the following offenses, order forfeiture of any device or apparatus that is used in committing the offense, including, but not limited to, any vehicle used or intended for use in committing the offense:

(A) Section 2000 relating to deer, elk, antelope, feral pigs, European wild boars, black bears, and brown or cinnamon bears.

(B) Any offense that involves the sale, purchase, or possession of abalone for commercial purposes.

(C) Any offense that involves the sale, purchase, or possession of sturgeon or lobster, pursuant to Section 7370 or 8254.

(D) Any offense that involves a violation of Section 12012.

(E) A violation of subdivision (b) of Section 12013.

(2) In considering an order of forfeiture under this subdivision, the court shall take into consideration the nature, circumstances, extent, and gravity of the prohibited act committed, the degree of culpability of the violator, the property proposed for forfeiture, and other criminal or civil penalties imposed on the violator under other provisions of law for that offense. The court shall impose lesser forfeiture penalties under this subdivision for those acts that have little significant effect upon natural



resources or the property of another and greater forfeiture penalties for those acts that may cause serious injury to natural resources or the property of another, as determined by the court. In determining whether or not to order forfeiture of a vehicle, the court shall, in addition to any other relevant factor, consider whether the defendant is the owner of the vehicle and whether the owner of the vehicle had knowledge of the violation.

(3) It is the intent of the Legislature that forfeiture not be ordered pursuant to this subdivision for minor or inadvertent violations, as determined by the court.

(d) A judge shall not order the forfeiture of a vehicle under this section if there is a community property interest in the vehicle that is owned by a person other than the defendant and the vehicle is the only vehicle available to the defendant's immediate family that may be operated on the highway with a class A, class B, or class C driver's license.

(e) Any device or apparatus ordered forfeited shall be sold, used, or destroyed by the department.

(f) (1) The proceeds from all sales under this section, after payment of any valid liens on the forfeited property, shall be paid into the Fish and Game Preservation Fund.

(2) A lien in which the lienholder is a conspirator is not a valid lien for purposes of this subdivision.

(g) The provisions in this section authorizing or requiring a judge to order the forfeiture of a device or apparatus also apply to the judge, referee, or juvenile hearing officer in a juvenile court action brought under Section 258 of the Welfare and Institutions Code.



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(h) For purposes of this section, a plea of nolo contendere or no contest, or forfeiture of bail, constitutes a conviction.

(i) Neither the disposition of the criminal action other than by conviction nor the discretionary refusal of the judge to order forfeiture upon conviction impairs the right of the department to commence proceedings to order the forfeiture of fish nets or traps pursuant to Section 8630.

SEC. 4. Section 12159.5 of the Fish and Game Code is amended to read:

12159.5. The judge before whom any person is tried for a violation of a provision of this code that prohibits the taking of any endangered species, threatened species, or fully protected bird, mammal, reptile, amphibian, or fish, as specified by ~~Section 12008~~, Sections 12008 and 12008.1, may, in the court's discretion and upon the conviction of that person, order the forfeiture of any proceeds resulting from the taking of the endangered species, threatened species, or fully protected bird, mammal, reptile, amphibian, or fish.

SEC. 5. Section 258 of the Welfare and Institutions Code is amended to read:

258. (a) Upon a hearing conducted in accordance with Section 257, and upon either an admission by the minor of the commission of a violation charged, or a finding that the minor did in fact commit the violation, the judge, referee, or juvenile hearing officer may do any of the following:

(1) Reprimand the minor and take no further action.

(2) Direct that the probation officer undertake a program of supervision of the minor for a period not to exceed six months, in addition to or in place of the following orders.



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(3) Order that the minor pay a fine up to the amount that an adult would pay for the same violation, unless the violation is otherwise specified within this section, in which case the fine shall not exceed two hundred fifty dollars (\$250). This fine may be levied in addition to or in place of the following orders and the court may waive any or all of this fine, if the minor is unable to pay. In determining the minor's ability to pay, the court shall not consider the ability of the minor's family to pay.

(4) Subject to the minor's right to a restitution hearing, order that the minor pay restitution to the victim, in lieu of all or a portion of the fine specified in paragraph (3). The total dollar amount of the fine, restitution, and any program fees ordered pursuant to paragraph (9) shall not exceed the maximum amount which may be ordered pursuant to paragraph (3). This paragraph shall not be construed to limit the right to recover damages, less any amount actually paid in restitution, in a civil action.

(5) Order that the driving privileges of the minor be suspended or restricted as provided in the Vehicle Code or, notwithstanding Section 13203 of the Vehicle Code or any other provision of law, when the Vehicle Code does not provide for the suspension or restriction of driving privileges, that, in addition to any other order, the driving privileges of the minor be suspended or restricted for a period of not to exceed 30 days.

(6) In the case of a traffic related offense, order the minor to attend a licensed traffic school, or other court approved program of traffic school instruction pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5 of the Vehicle Code, to be completed by the juvenile within 60 days of the court order.



(7) Order that the minor produce satisfactory evidence that the vehicle or its equipment has been made to conform with the requirements of the Vehicle Code pursuant to Section 40150 of the Vehicle Code if the violation involved an equipment violation.

(8) Order that the minor perform community service work in a public entity or any private nonprofit entity, for not more than 50 hours over a period of 60 days, during times other than his or her hours of school attendance or employment. Work performed pursuant to this paragraph shall not exceed 30 hours during any 30-day period. The timeframes established by this paragraph shall not be modified except in unusual cases where the interests of justice would best be served. When the order to work is made by a referee or a juvenile hearing officer, it shall be approved by a judge of the juvenile court.

For purposes of this paragraph, a judge, referee, or juvenile hearing officer shall not, without the consent of the minor, order the minor to perform work with a private nonprofit entity that is affiliated with any religion.

(9) In the case of a misdemeanor, order that the minor participate in and complete a counseling or educational program, or, if the offense involved a violation of a controlled substance law, a drug treatment program, if those programs are available. Fees for participation shall be subject to the right to a hearing as the minor's ability to pay and shall not, together with any fine or restitution order, exceed the maximum amount that may be ordered pursuant to paragraph (3).

(10) Require that the minor attend a school program without unexcused absence.



(11) If the offense is a misdemeanor committed between 10 p.m. and 6 a.m., require that the minor be at his or her legal residence at hours to be specified by the juvenile hearing officer between the hours of 10 p.m. and 6 a.m., except for a medical or other emergency, unless the minor is accompanied by his or her parent, guardian, or other person in charge of the minor. The maximum length of an order made pursuant to this paragraph shall be six months from the effective date of the order.

(12) Make any or all of the following orders with respect to a violation of the Fish and Game Code which is not charged as a felony:

(A) That the fishing or hunting license involved be suspended or restricted.

(B) That the minor work in a park or conservation area for a total of not to exceed 20 hours over a period not to exceed 30 days, during times other than his or her hours of school attendance or employment.

(C) That the minor forfeit, pursuant to Section 12157 of the Fish and Game Code, any device or apparatus designed to be, and capable of being, used to take birds, mammals, fish, reptiles, or amphibia and that was used in committing the violation charged. The judge, referee, or juvenile hearing officer shall, if the minor committed an offense that is punishable under Section 12008 or 12008.1 of the Fish and Game Code, order the device or apparatus forfeited pursuant to Section 12157 of the Fish and Game Code.

(13) If the violation charged is of an ordinance of a city, county, or local agency relating to loitering, curfew, or fare evasion on a public transportation system, as defined by Section 99211 of the Public Utilities Code, or is a violation of Section 640 or 640a of the Penal Code, make the order that the minor shall perform community service for



a total time not to exceed 20 hours over a period not to exceed 30 days, during times other than his or her hours of school attendance or employment.

(b) If the minor is before the court on the basis of truancy, as described in subdivision (b) of Section 601, all of the following procedures and limitations shall apply:

(1) The judge, referee, or juvenile hearing officer shall not proceed with a hearing unless both of the following have been provided to the court:

(A) Evidence that the minor's school has undertaken the actions specified in subdivisions (a), (b), and (c) of Section 48264.5 of the Education Code. If the school district does not have an attendance review board, as described in Section 48321 of the Education Code, the minor's school is not required to provide evidence to the court of any actions the school has undertaken that demonstrate the intervention of a school attendance review board.

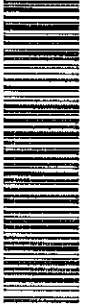
(B) The available record of previous attempts to address the minor's truancy.

(2) The court is encouraged to set the hearing outside of school hours, so as to avoid causing the minor to miss additional school time.

(3) Pursuant to paragraph (1) of subdivision (a) of Section 257, the minor and his or her parents shall be advised of the minor's right to refuse consent to a hearing conducted upon a written notice to appear.

(4) The minor's parents shall be permitted to participate in the hearing.

(5) The judge, referee, or juvenile hearing officer may continue the hearing to allow the minor the opportunity to demonstrate improved attendance before imposing



any of the orders specified in paragraph (6). Upon demonstration of improved attendance, the court may dismiss the case.

(6) Upon a finding that the minor violated subdivision (b) of Section 601, the judge, referee, or juvenile hearing officer shall direct his or her orders at improving the minor's school attendance. The judge, referee, or juvenile hearing officer may do any of the following:

(A) Order the minor to perform community service work, as described in Section 48264.5 of the Education Code, which may be performed at the minor's school.

(B) Order the payment of a fine by the minor of not more than fifty dollars (\$50), for which a parent or legal guardian of the minor may be jointly liable. The fine described in this subparagraph shall not be subject to Section 1464 of the Penal Code or additional penalty pursuant to any other law. The minor, at his or her discretion, may perform community service, as described in subparagraph (A), in lieu of any fine imposed under this subparagraph.

(C) Order a combination of community service work described in subparagraph (A) and payment of a portion of the fine described in subparagraph (B).

(D) Restrict driving privileges in the manner set forth in paragraph (5) of subdivision (a). The minor may request removal of the driving restrictions if he or she provides proof of school attendance, high school graduation, GED completion, or enrollment in adult education, a community college, or a trade program. Any driving restriction shall be removed at the time the minor attains 18 years of age.

(c) (1) The judge, referee, or juvenile hearing officer shall retain jurisdiction of the case until all orders made under this section have been fully complied with.





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(2) If a minor is before the judge, referee, or juvenile hearing officer on the basis of truancy, jurisdiction shall be terminated upon the minor attaining 18 years of age.

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