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AB-965 California and Mexico border: water resources improvement. (2015-2016)

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Assembly Bill No. 965

CHAPTER 668

An act to amend Sections 99520, 99522, and 99523 of the Government Code, to amend Sections 71100, 71101, 71103, and 71103.5 of, and to add Section 71103.6 to, the Public Resources Code, and to amend Sections 7048 and 79737 of the Water Code, relating to the California-Mexico border.

[Approved by Governor October 09, 2015. Filed with Secretary of State October 09, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 965, Eduardo Garcia. California and Mexico border: water resources improvement.

(1) Existing law establishes the California-Mexico Border Relations Council in state government, and prescribes the membership and functions and duties of the council with respect to coordinating the activities of state agencies, including environmental agencies, that are related to cross-border programs, initiatives, projects, and partnerships that exist within state agencies, and state and local efforts that are of concern between California and Mexico. Existing law requires the council to develop a strategic plan to guide a project to study, monitor, remediate, and enhance water quality in the New River in Imperial County. Existing law establishes the California Border Environmental and Public Health Protection Fund and makes moneys in the fund available, upon appropriation, to the Secretary for Environmental Protection for grants for specified health and environmental projects and purposes relating to the California-Mexico border region.

This bill would add the Secretary of State and Consumer Services as a member of the council and provide that the Regional Administrator of the United States Environmental Protection Agency, Region 9, may appoint a representative from his or her staff to serve as an ex-officio, nonvoting member of the council. The bill would require the council to invite the participation of representatives of the State of Baja California and the Mexican government to participate in meetings. The bill would require the council to establish the New River Water Quality, Public Health, and River Parkway Development Program to coordinate funding for, and the implementation of, recommendations from the strategic plan and the projects identified pursuant to existing law. The bill would make moneys in the fund available, upon appropriation, to the council for grants for specified health and environmental projects and purposes relating to the California-Mexico border region. The bill would provide that specified water bond proceeds may be deposited in the fund to be available, upon appropriation, to the council for these purposes.

(2) Existing law authorizes the Director of Water Resources to establish a program of flood damage reduction and urban creek restoration known as the Urban Streams Restoration Program. For purposes of the program, urban creek protection, restoration, and enhancement include, but are not limited to, the maintenance of channel capacity, channel stabilization, vegetation management, and adaptive management to meet program objectives.

This bill would also include the reduction of water quality impairments and nonpoint source water pollution, and the establishment of parkways for public use that benefit flood control and water quality among the types of measures that are included in the program.

Existing law requires the Department of Water Resources to coordinate the program with the Department of Fish and Wildlife, as prescribed.

This bill would, in addition, require the Department of Water Resources to consult with the council to establish criteria to fund projects that improve conditions for cross-border urban creeks.

(3) Existing law, the Water Quality, Supply, and Infrastructure Improvement Act of 2014, approved by the voters as Proposition 1 at the November 4, 2014, statewide general election, authorizes the issuance of general obligation bonds in the amount of \$7,545,000,000 to finance a water quality, supply, and infrastructure improvement program. The bond act provides that the sum of \$1,495,000,000 is to be available, upon appropriation by the Legislature, for competitive grants for multibenefit ecosystem and watershed protection and restoration projects. The bond act authorizes the use of \$285,000,000 of those funds for watershed restoration projects through a program implemented by the Department of Fish and Wildlife.

This bill would require the department to consult with the council to establish criteria to fund watershed restoration projects that improve conditions for cross-border urban creeks and watersheds.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 99520 of the Government Code is amended to read:

99520. The Legislature finds and declares the following:

(a) The United States and Mexican economies have become increasingly integrated, particularly since the 1994 adoption of the North American Free Trade Agreement, or NAFTA.

(b) As the second largest United States exporter to Mexico, California has the potential to increase its exports at a faster pace and capitalize on Mexico's growing economy.

(c) In 2012, the value of California's exports to Mexico totaled \$26.3 billion, equivalent to more than one and one-half times California's trade with its closest trade partner Canada, at \$17.2 billion, and almost twice its second closest trade partner, China, at \$13.9 billion.

(d) The relationship between Mexico and California generates over \$20.9 billion per year for California.

(e) According to the United States Chamber of Commerce, trade with Mexico in 2010 represented 692,240 California jobs, making California the state with the most trade-related jobs with Mexico in the United States. California is the second largest exporter to Mexico among the 50 states, ranking behind Texas.

(f) Among California's international trading partners, only Mexico shares a border with California. In fact, California has four major international border crossings supporting the movement of both persons and goods: San Ysidro, Otay Mesa, Tecate, and Calexico. Of these, Otay Mesa and Calexico accommodate the largest volume of trade. Otay Mesa is the largest California crossing, ranking sixth in the nation. In 2010, these California gateways with Mexico moved \$46.9 billion in merchandise.

(g) At issue is border crossing delays between Mexico and the United States along the Imperial County-Baja California border.

(h) In California, losses due to border crossing delays accounted for an estimated revenue loss of \$1.16 billion and 25,000 jobs in 2008.

(i) While California remains the largest recipient of foreign domestic investment (FDI) in the United States, faster FDI is occurring elsewhere.

(j) Despite this critical economic relationship, California has not had a formal mechanism for the past decade devoted to maximizing trade, addressing challenges, and coordinating cross-border programs for trade development between the two countries. This has left California employers and businesses without formal access to Mexican government officials, a major disadvantage to California's trade industries.

(k) In 2006, the Office of California-Mexico Affairs was established to further and develop favorable relations with Mexican states by cooperating with similar organizations and agencies situated within California, the United States, or Mexico. Important areas of activity include, but are not limited to, enhancing economic development opportunities among the participating states, improving working conditions and living standards, and fostering the protection and improvement of the environment in Mexico and California.

(l) To help carry out these duties the California-Mexico Border Relations Council was also established to identify new border priorities and fundable projects in the areas of infrastructure, trade, environment, health, and security while supporting current and ongoing activities such as the Border Governors Conference, trade missions, and border workgroups, and coordinating specific future projects with Mexico. Priorities and projects identified by the California-Mexico Border Relations Council shall be funded pursuant to Section 71101 of the Public Resources Code, establishing the California Border Environmental and Public Health Protection Fund.

(m) It is critical for California that state agencies continue to address important United States-Mexico issues.

(n) Furthermore, California should maximize its economic relationship with Mexico to improve the state's economy, to maximize the amount of exports, and create more California jobs.

(o) Therefore, the Legislature finds that California needs a formalized trade relationship with Mexico. Establishing an official trade relationship with Mexico will help ensure that the state can improve its global competitiveness and protect California industry, proactively support the expansion and location of businesses in California, provide international business assistance to California businesses, and support their entry and successful participation in the growing Mexican marketplace.

(p) The California-Mexico Border Relations Council provides a focal point in state government to serve as a clearinghouse for information and assistance to other state agencies that are involved with Mexico.

SEC. 2. Section 99522 of the Government Code is amended to read:

99522. (a) The California-Mexico Border Relations Council is hereby established in state government. The council shall consist of the Director of the Governor's Office of Business and Economic Development, the Secretary of the Natural Resources Agency, the Secretary for Environmental Protection, the Secretary of California Health and Human Services, the Secretary of Transportation, the Secretary of Food and Agriculture, the Secretary of State and Consumer Services, and the Director of Emergency Services. The Regional Administrator of the United States Environmental Protection Agency, Region 9, may appoint a representative from his or her staff to serve as an ex-officio, nonvoting member of the council.

(b) The Secretary for Environmental Protection shall chair the council.

SEC. 3. Section 99523 of the Government Code is amended to read:

99523. The council shall do all of the following:

(a) Coordinate activities of state agencies that are related to cross-border programs, initiatives, projects, and partnerships that exist within state government, to improve the effectiveness of state and local efforts that are of concern between California and Mexico.

(b) Invite representatives of the State of Baja California and the Mexican government to participate in meetings.

(c) Establish policies to coordinate the collection and sharing of data related to cross-border issues between and among agencies.

(d) Establish the Border Region Solid Waste Working Group to develop and coordinate long-term solutions to address and remediate problems associated with waste tires, solid waste, and excessive sedimentation along the border that cause the degradation of valuable estuarine and riparian habitats, and threaten water quality and public health in the state.

(e) Identify and recommend to the Legislature changes in law needed to achieve the goals of this section.

SEC. 4. Section 71100 of the Public Resources Code is amended to read:

71100. The following definitions govern the construction of this part:

(a) "California-Baja California border region" means the region to the north and south of the international border between California and Baja California described in Article 4 of the La Paz Agreement, signed August 14, 1983, between the United States and Mexico.

(b) "Council" means the California-Mexico Border Relations Council, established pursuant to Section 99522 of the Government Code.

(c) "Fund" means the California Border Environmental and Public Health Protection Fund established pursuant to Section 71101.

SEC. 5. Section 71101 of the Public Resources Code is amended to read:

71101. (a) The California Border Environmental and Public Health Protection Fund is hereby established in the State Treasury to receive funds appropriated in the annual Budget Act, including, but not limited to, proceeds of bonds sold pursuant to Division 26.7 (commencing with Section 79700) of the Water Code, and other sources, such as from the North American Development Bank, Border Environment Cooperation Committee, United States Environmental Protection Agency, and private businesses or foundations, and any interest accrued on those funds.

(b) The money in the fund shall be available, upon appropriation, to the California-Mexico Border Relations Council pursuant to Chapter 2 (commencing with Section 99520) of Title 20 of the Government Code, for expenditure for the purposes of this part.

(c) The money in the fund shall not be made available for the purpose of bringing a person or a facility into compliance with environmental laws, or to provide funds to remediate environmental damage. The fund, instead, shall assist appropriate responsible agencies in California and Baja California in the implementation of projects to identify and resolve environmental and public health problems that directly threaten the health or environmental quality of California residents or sensitive natural resources of the California border region, including projects related to domestic and industrial wastewater, vehicle and industrial air emissions, hazardous waste transport and disposal, human and ecological risk, and disposal of municipal solid waste.

SEC. 6. Section 71103 of the Public Resources Code is amended to read:

71103. (a) The California-Mexico Border Relations Council, upon request, shall inform any community-based nonprofit environmental organization, responsible local government, and special district located within the California-Baja California border region that it may request funding pursuant to Section 71102.

(b) The California-Mexico Border Relations Council, shall award grants to a local governmental entity or special district, community-based nonprofit environmental organization, or postsecondary educational institution based on the severity of the environmental, public health, or natural resource concerns due to cross-border transmission of environmental pollutants or toxics to the city or county in which the entity, organization, or institution is located. First priority for funding shall be given to an entity, organization, or institution located in a city or county in which an environmental, public health, or natural resource threat exists and that has existing capability to respond to, implement, and abate the threat to California from cross-border sources.

(c) The Secretary for Environmental Protection, on behalf of the council, shall accept donations of used equipment, including computers, printers, and lab equipment, for distribution to governmental entities and community-based nonprofit environmental organizations located within the California-Baja California border region and postsecondary educational institutions located within Baja California and within the California-Baja California border region, if the donations can be shown to contribute to the protection of the environment, public health, or natural resources of the California border region.

SEC. 7. Section 71103.5 of the Public Resources Code is amended to read:

71103.5. (a) The Legislature finds and declares all of the following:

(1) The New River poses an imminent and severe threat to the public health of residents of Calexico, California, and adjacent communities in Imperial County. Since the 1940s, the New River has been recognized as a significant pollution and human health problem, primarily because of extremely high concentrations of fecal coliform bacteria.

(2) While there have been recent measurable water quality improvements as a result of sewage infrastructure projects implemented and completed during the last 10 years in Mexicali, Mexico, the residual and projected pollution in the New River coming from Mexico remains a significant threat to public health and the environment.

(3) Current bacteria levels in the New River are several orders of magnitude above the state standards for bacteria. Based on these levels and the historic levels of pollution, the waterway is believed to carry pathogens that cause tuberculosis, encephalitis, polio, cholera, hepatitis, and typhoid. The waterway also carries other contaminants in concentrations that are in violation of federal, state, and Mexican water quality standards by several hundredfold.

(4) The New River is listed as an impaired river by the United States Environmental Protection Agency due to low dissolved oxygen (DO) and the presence of chlordane, chlorpyrifos, copper, dichloro-diphenyl-trichloroethane (DDT), diazinon, dieldrin, mercury, nutrients, pathogens, polychlorinated biphenyls (PCBs), sediment, selenium, toxaphene, toxicity, trash, and volatile organic compounds (VOCs).

(5) The New River is a major contributor of pollution to the Salton Sea, and failure to address water quality problems in the New River is impeding the ability of the state to implement laws and programs designed to restore and protect this important environmental and wildlife habitat resource.

(6) The New River condition in the border area is also an aesthetic nuisance for Calexico residents and has historically inhibited the city's socioeconomic well-being and growth.

(7) A coordinated and comprehensive state strategy is needed to deal with the residual and projected pollution so that the New River and associated river channel can be enhanced to a condition that will allow the residents of Calexico and Imperial County to utilize them as recreational and natural assets as contemplated in the California River Parkways Act of 2004 (Chapter 3.8 (commencing with Section 5750) of Division 5).

(8) In the Budget Act of 2009, as amended by Chapter 1 of the Statutes of 2009 Fourth Extraordinary Session, eight hundred thousand dollars (\$800,000) was appropriated to the City of Calexico for various planning needs necessary to develop a river parkway plan and river improvement project for the New River. The moneys were appropriated in order to secure and serve as matching funds for the four million dollars (\$4,000,000) allocated pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59) to the City of Calexico for the development of bicycle paths and public park space adjacent to the New River.

(9) The City of Calexico, as the recipient of funding pursuant to the California River Parkways Act of 2004, has agreed to provide necessary financial support to the council for the development of the council's strategic plan.

(b) As used in this section, the following terms have the following meanings:

(1) "Agency" means the California Environmental Protection Agency.

(2) "City" means the City of Calexico, California.

(3) "Council" means the California-Mexico Border Relations Council established pursuant to Section 99522 of the Government Code.

(4) "County" means the County of Imperial, California.

(5) "IBWC" means the International Boundary and Water Commission, United States Section.

(6) "New River Improvement Project" or "project" means a project to study, monitor, remediate, and enhance New River water quality in the County of Imperial to protect human health, and develop a river parkway suitable for public use and enjoyment.

(c) Pursuant to the authority granted to the council pursuant to Section 99523 of the Government Code and contingent upon the execution of an agreement with the City of Calexico for the purpose of providing the necessary funding, the council shall develop a strategic plan to guide the implementation of the New River Improvement Project. The strategic plan shall include, but need not be limited to, all of the following elements:

(1) Quantification of current and projected New River water quality impairments and their threat to public health.

(2) Prioritization of the actions necessary to protect public health and to meet New River water quality objectives and other environmental goals, such as improving the quality of water flows into the Salton Sea.

(3) Identification of potential funds for the implementation of the project, and potential lead agencies that would be responsible for environmental review of activities related to the cleanup and restoration of the New River.

(4) Identification of the appropriate federal, state, and local agencies with a role in implementing and achieving the New River Improvement Project.

(d) (1) To the extent permitted by law, the council may work with appropriate binational, federal, state, local, and nongovernmental organizations on both sides of the California-Mexico border to develop the strategic plan and to fund and establish cooperative water quality monitoring, public health studies, inspection, and technical assistance programs as needed to support, convene, and oversee the project.

(2) To further the objectives of this subdivision, the council may convene and oversee a technical advisory committee. The advisory committee shall advise the council regarding the necessary studies and activities to carry out the project, and shall serve at the pleasure of the council. The advisory committee shall include representatives from the following:

(A) Impacted cities and counties.

(B) Relevant local, regional, and state agencies and departments.

(C) Nongovernmental organizations.

(D) Other stakeholders deemed necessary by the council.

(3) The council shall appoint the chair of the committee and may expand the membership and expertise of the committee as it deems necessary.

(4) The council may enter into an agreement, including an interagency agreement and memorandum of understanding, with public agencies, including the city, to accept, manage, and expend funds for the implementation of this section.

(e) This section does not modify existing roles, responsibilities, or liabilities of the State of California, the City of Calexico, Imperial County, or any other governmental agency, under those laws that regulate, protect, and clean up surface waters entering the United States from Mexico.

(f) The New River Improvement Project Account is hereby created in the California Border Environmental and Public Health Protection Fund to receive moneys for activities related to the New River Improvement Project from sources identified in Section 71101 and other sources. Upon appropriation by the Legislature, moneys in the account shall be expended to implement the purposes identified in subdivision (c) or Section 71102 that are related to the New River.

SEC. 8. Section 71103.6 is added to the Public Resources Code, to read:

71103.6. (a) The council shall establish the New River Water Quality, Public Health, and River Parkway Development Program to coordinate funding for, and the implementation of, the recommendations from the strategic plan developed pursuant to subdivision (c) of Section 71103.5, and the projects identified pursuant to Section 71102.

(b) Any entity of state government that funds the activities of the program shall make all necessary efforts to integrate and align its contractual and administrative requirements for grants, loans, and other forms of financial support to meet the goals of the program.

SEC. 9. Section 7048 of the Water Code is amended to read:

7048. (a) The Legislature hereby finds and declares that the protection, restoration, and enhancement of urban creek channels provide potential benefits to the state by combining an effective and efficient means of flood damage reduction with the preservation and enhancement of natural environmental values. The Legislature further finds that urban creek protection, restoration, and enhancement are best undertaken by local agencies and organizations with assistance from the state. It is the intent of the Legislature, in enacting this section, to restore the ecological viability of creek environments located in predominantly urban areas, thereby enhancing aesthetic, recreational, and fish and wildlife values.

(b) (1) The director may establish a program of flood damage reduction and urban creek restoration known as the Urban Streams Restoration Program. The program shall consist of both of the following components:

(A) The development of the capability by the department to respond to requests from local agencies and organizations for planning and design assistance for efficient and effective urban creek protection, restoration, and enhancement.

(B) To the extent that funds are provided, a process for awarding competitive grants.

(2) For purposes of this section, urban creek protection, restoration, and enhancement include, but are not limited to, the maintenance of channel capacity, channel stabilization, vegetation management, the reduction of water quality impairments and nonpoint source water pollution, the establishment of parkways for public use that benefit flood control and water quality, and adaptive management to meet program objectives. Where appropriate, the protection, restoration, and enhancement shall utilize efficient, nonstructural low-maintenance flood protection techniques. The department shall utilize in this program its expertise in a variety of disciplines, including, but not limited to, soil bioengineering, hydrology, and plant ecology.

(3) (A) The department shall maintain a balance in allocating the money annually available for grants to small urban creek restoration projects and large urban stream restoration projects, allocating not less than 35 percent to both small and large projects. For purposes of this section, "small urban creek restoration projects" are projects for which total costs, including acquisition and restoration costs, are below one million dollars (\$1,000,000) and "large urban stream restoration projects" are projects for which total costs, including acquisition and restoration costs, are one million dollars (\$1,000,000) or more.

(B) Notwithstanding subparagraph (A), if an insufficient number of qualified projects are available to fully meet the allocation requirement, the department may grant funds to any project that is otherwise qualified, in order to ensure that all available funds are used efficiently.

(c) In responding to requests for assistance, the department shall give priority to those projects that are being planned in conjunction with, or in lieu of, local flood control projects. The department may award grants and contracts to local agencies and organizations as provided for in the budget of the department. Participating local agencies and organizations shall follow procedures, plans, and practices that are acceptable to the department, and shall conform to guidelines established by the department that define the level of contribution and participation required by local agencies and organizations.

The department shall coordinate the program with the Department of Fish and Wildlife during the formulation of guidelines and project planning for urban creek protection, restoration, and enhancement. The department shall also consult with the Department

of Fish and Wildlife on project criteria which may include economic, environmental, and social benefits to be achieved.

(d) It is the intent of the Legislature that the duties and responsibilities of the department be identified as the Urban Streams Restoration Program and be carried out by an office or staff designated for this purpose. Information on how to obtain planning, design, and financial assistance should be readily accessible to the public.

(e) As used in this section, "urban creek" means a creek, stream, or river that crosses built-up residential, commercial, or industrial property, or that crosses land where, in the near future, the land use will be residential, commercial, or industrial.

(f) For the purposes of this section, eligible activities include, but are not limited to, the maintenance of channel capacity and stabilization of the morphological equilibrium of a natural channel for purposes of flood damage reduction, erosion control, and bank stabilization which may include nonstructural as well as structural projects.

(g) The department may adopt regulations that define "adaptive management" for the purposes of the Urban Streams Restoration Program, and establish criteria to fund projects that include adaptive management activities.

(h) The department may amend or utilize existing regulations for approving competitive grants. The regulations may include, but are not limited to, an application process, grant approval criteria, and grantee's reporting requirements. The department shall annually make available to the public, in a form that is readily accessible, information regarding the status of funds appropriated for these purposes and projects that received grants.

(i) In order to address the unique ecological, flood control, water quality, and hydrological conditions associated with urban creeks and watersheds on the California-Mexico border, the department shall consult with the California-Mexico Border Relations Council to establish criteria to fund projects that improve conditions for cross-border urban creeks.

SEC. 10. Section 79737 of the Water Code is amended to read:

79737. (a) Of the funds authorized by Section 79730, two hundred eighty-five million dollars (\$285,000,000) shall be available to the Department of Fish and Wildlife for watershed restoration projects statewide in accordance with this chapter.

(b) For the purposes of this section, watershed restoration includes activities to fund coastal wetland habitat, improve forest health, restore mountain meadows, modernize stream crossings, culverts, and bridges, reconnect historical flood plains, install or improve fish screens, provide fish passages, restore river channels, restore or enhance riparian, aquatic, and terrestrial habitat, improve ecological functions, acquire from willing sellers conservation easements for riparian buffer strips, improve local watershed management, and remove sediment or trash.

(c) For any funds available pursuant to this section that are used to provide grants under the Fisheries Restoration Grant Program, a priority shall be given to coastal waters.

(d) In allocating funds for projects pursuant to this section, the Department of Fish and Wildlife shall only make funds available for water quality, river, and watershed protection and restoration projects of statewide importance outside of the Delta.

(e) Funds provided by this section shall not be expended to pay the costs of the design, construction, operation, mitigation, or maintenance of Delta conveyance facilities.

(f) Funds provided by this section shall only be used for projects that will provide fisheries or ecosystem benefits or improvements that are greater than required applicable environmental mitigation measures or compliance obligations, except for any water transfers for the benefit of subsection (d) of Section 3406 of the Central Valley Project Improvement Act (Title 34 of Public Law 102-575).

(g) In order to address the unique ecological, flood control, water quality, and hydrological conditions associated with urban creeks and watersheds on the California-Mexico border, the department shall consult with the California-Mexico Border Relations Council to establish criteria to fund projects that improve conditions for cross-border urban creeks and watersheds.