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AB-315 Voluntary stream restoration property owner liability: indemnification. (2021-2022)

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Assembly Bill No. 315

CHAPTER 580

An act to add Chapter 6.6 (commencing with Section 1660) to Division 2 of the Fish and Game Code, relating to fish and wildlife.

[Approved by Governor October 06, 2021. Filed with Secretary of State October 06, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 315, Stone. Voluntary stream restoration property owner liability: indemnification.

Existing law prohibits an entity from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake, or from depositing certain material where it may pass into any river, stream, or lake, without first notifying the Department of Fish and Wildlife of that project, and entering into a lake or streambed alteration agreement if required by the department to protect fish and wildlife resources.

Existing law authorizes a habitat restoration or enhancement project proponent to submit a written request for approval of the project to the Director of Fish and Wildlife. Existing law requires the director to approve the project if the written request includes certain information, as specified, and provides for an alternate authorization process by the State Water Resources Control Board.

The Government Claims Act sets forth the general procedure for claims and actions against public entities and public employees. Existing law requires the Department of General Services to carry out various duties, including processing certain types of claims against the state.

This bill would require a qualifying state agency, as defined, that funds a project to restore fish and wildlife habitats to indemnify and hold harmless a real property owner who voluntarily allows their real property to be used for such a project from civil liability for property damage or personal injury resulting from the project if the project qualifies for a specified exemption and meets specified requirements, including that the liability arises from, and the real property owner or any person or entity retained by the real property owner does not perform, the construction, design specifications, surveying, planning, supervision, testing, or observation of construction related to the project. The bill would authorize a qualifying state agency to indemnify and hold harmless a real property owner who voluntarily allows their real property to be used for that project from civil liability for property damage or personal injury resulting from the project in the case the project does not meet the specified exemption. The bill would authorize a qualifying state agency to enter into an agreement with the United States government, or subdivision thereof, to share the cost of any civil liability incurred. The bill would require the costs of any civil liability incurred by a qualifying state agency to be promptly paid from the General Fund, and those costs to be submitted as a claim by the real property owner to the Department of General Services, as specified. The bill would require the costs incurred by a qualifying state agency in investigating and defending against any claim to be paid from the General Fund.

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

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

SECTION 1. The Legislature finds and declares all of the following:

- (a) The state is home to a wealth of native aquatic species, including anadromous salmonid fish, that are vital to the state's natural heritage, and support recreation opportunities and a commercial fishing industry.
- (b) Many of these species are in decline due to degradation and loss of habitat, and some have been listed as threatened or endangered under the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) and the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).
- (c) The state has prepared plans and administers various grant programs to recover many of these species and improve the health of aquatic habitat and ecosystems, and these programs call for extensive restoration of riparian habitat located on privately owned lands.
- (d) A lack of clarity surrounding liability for damages that may result from restoration projects has made many private property owners reluctant to allow habitat restoration projects on their property, and this reluctance has been a barrier to the implementation of projects that could otherwise help the state meet its goals for recovering sensitive aquatic species and their habitat.
- (e) Damage claims associated with habitat restoration are exceedingly rare, and potential financial liability associated with such claims should be and typically is borne by the parties who design and implement such projects, not by property owners who simply allow the project to be implemented on their property.
- (f) The state has a responsibility to minimize barriers to implementing projects funded by programs it administers, especially when the projects help the state meet its conservation goals and provide public benefits.

SEC. 2. Chapter 6.6 (commencing with Section 1660) is added to Division 2 of the Fish and Game Code, to read:

CHAPTER 6.6. Voluntary Stream Restoration Property Owner Liability

1660. (a) A qualifying state agency that funds a project to restore fish and wildlife habitats shall indemnify and hold harmless a real property owner who voluntarily allows their real property to be used for the project from civil liability for property damage or personal injury resulting from the project if all of the following requirements are met:

- (1) The project is authorized pursuant to Section 1602, 1652, or 1653.
 - (2) The project has received all approvals required under Part 1 (commencing with Section 6000) of Division 3 of the Water Code or Division 7 (commencing with Section 13000) of the Water Code.
 - (3) The liability arises from the construction, design specifications, surveying, planning, supervision, testing, or observation of construction related to the project.
 - (4) The real property owner does not perform, or retain any person or entity to perform, any construction, design specifications, surveying, planning, supervising, testing, or observation of construction related to the project.
 - (5) The project qualifies for an exemption from Division 13 (commencing with Section 21000) of the Public Resources Code as a small habitat restoration project under guidelines adopted by the Secretary of the Natural Resources Agency pursuant to Section 21084 of the Public Resources Code.
- (b) In the case of a project that does not meet the requirements prescribed in paragraph (5) of subdivision (a), but meets all other requirements of subdivision (a), a qualifying state agency may indemnify and hold harmless a real property owner who voluntarily allows their real property to be used for the project from civil liability for property damage or personal injury resulting from the project.
- (c) A qualifying state agency may develop any guidelines, forms, or contracts necessary to implement subdivision (a). Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the development, adoption, or amendment of guidelines, forms, or contracts pursuant to this subdivision.
- (d) A qualifying state agency may enter into an agreement with the United States government, or subdivision thereof, to share the cost of any civil liability incurred pursuant to subdivision (a) or (b).
- (e) (1) The costs of any civil liability incurred by a qualifying state agency pursuant to subdivision (a) or (b) shall be promptly paid from the General Fund, and those costs shall be submitted as a claim by the real property owner to the Department of General Services pursuant to Section 905.2 of the Government Code.

(2) The costs incurred by a qualifying state agency in investigating and defending against any claim pursuant to subdivision (a) or (b) shall be paid from the General Fund.

(f) This section shall not be construed to alter any existing rights, duties, or obligations arising from Title 12 (commencing with Section 2772) of Part 4 of Division 3 of the Civil Code.

(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(h) For purposes of this section, a "qualifying state agency" means the Natural Resources Agency and the California Environmental Protection Agency, as well as all boards, commissions, conservancies, and departments within the jurisdiction of those agencies.