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**AB-2875 Wetlands: state policy.** (2023-2024)

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**Assembly Bill No. 2875**

**CHAPTER 579**

An act to add Chapter 28 (commencing with Section 16200) to Division 7 of the Water Code, relating to wetlands.

[ Approved by Governor September 25, 2024. Filed with Secretary of State September 25, 2024. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2875, Friedman. Wetlands: state policy.

Existing law, the Keene-Nejedly California Wetlands Preservation Act, requires the Natural Resources Agency to prepare a plan for the acquisition, protection, preservation, restoration, and enhancement of wetlands, including funding requirements and the priority status of specific proposed wetlands projects. By Executive Order No. W-59-93, former Governor Pete Wilson declared it to be the policy of the state that its Comprehensive Wetlands Policy rests on three primary objectives, including the objective of ensuring no overall net loss and long-term net gain in the quantity, quality, and permanence of wetlands acreage and values, as provided.

This bill would declare that it is the policy of the state to ensure no net loss and long-term gain in the quantity, quality, and permanence of wetlands acreage and values in California. The bill would make related legislative findings and declarations.

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

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

**SECTION 1.** Chapter 28 (commencing with Section 16200) is added to Division 7 of the Water Code, to read:

**CHAPTER 28. California Wetlands Policy Act**

**16200.** The Legislature finds and declares the following:

(a) California's wetland resources provide an abundance of benefits for humans and the environment, including, but not limited to, flood risk reduction, filtration of water pollutants, surface and groundwater supplies, shoreline protection, erosion reduction, wildlife habitat, open space, and public recreational opportunities. Wetlands are an important habitat for migratory waterfowl of the Pacific Flyway, endangered species, and many other resident wildlife and fish populations.

(b) Scientists have determined that though small in area, wetlands are carbon sinks and wetland drainage leads to significant carbon and greenhouse gas emissions as stored carbon is oxidized. Management and restoration of wetlands provide many opportunities to restore carbon and reduce greenhouse gas emissions.

(c) Historical filling and development projects have reduced California wetlands to a mere 10 percent of their original extent. The loss of coastal wetlands is even more alarming with 95 percent of the formerly abundant lagoons and marshes along California's

1,100-mile coastline having been destroyed.

(d) In 1972, Congress enacted the Clean Water Act, which included a program designed to preserve the nation's dwindling wetlands. In recent decades, litigation over the extent of federal authority to protect wetlands and federal regulators' failure to delineate clearly that authority has combined to threaten the nation's few remnant wetlands.

(e) The United States Supreme Court issued a ruling in *Sackett v. Environmental Protection Agency* (2023) 598 U.S. 651 that has had enormous ramifications for the health of the nation's and California's wetlands and waterways because it excluded many types of state waters, including certain wetlands, from federal Clean Water Act protection.

(f) The Porter-Cologne Water Quality Control Act applies to waters of the state, which includes wetlands and other isolated and ephemeral waters. The State of California and the state board possess independent power to protect and preserve the state's remaining wetlands.

(g) In 2019, the state board adopted the "State Policy for Water Quality Control: State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State." The state board adopted this state policy to ensure that California would protect wetlands no longer protected by federal law.

(h) The action by the state board builds on the history of California's efforts to conserve, protect, and restore wetlands. On August 23, 1993, Governor Pete Wilson issued Executive Order No. W-59-93, in which he recognized the importance of wetlands to California, the extreme loss of wetlands during the 19th and 20th centuries, and the need to ensure no net loss and long-term gain in the quantity, quality, and permanence of wetlands acreage and values in a manner that fosters creativity, stewardship, and respect for private property.

(i) Since Governor Wilson's executive order establishing a state policy of no net loss and long-term gain of wetlands, California has continued to lose more wetland acres than it replaces through restoration or mitigation. As these wetlands disappear, more wetland-dependent fish and wildlife slide closer to extinction and migratory birds are crowded into shrinking habitat areas that cause devastating outbreaks of disease and fail to provide the food necessary for these birds to make their long journeys between their summer and winter homes. California continues to remove lands that, if conserved, would provide important public benefits.

(j) It is essential that California protect its last remaining wetlands and restore wetlands to achieve long-term gains for climate mitigation and resilience, flood risk reduction, clean water, biodiversity conservation, and recreation.

(k) It is the intent of the Legislature that the implementation of the state policy of no net loss and long-term gain of wetlands is not measured on a permit-by-permit basis. This state policy will take efforts on multiple scales to achieve, including thoughtful project design and implementation, conservation of wetlands, restoration of wetlands, and landscape scale conservation planning.

(l) It is the intent of the Legislature to codify the fundamental principles of the state wetlands policy to protect, restore, and expand California wetlands, and to concurrently ensure the state facilitates and encourages the enhancement and restoration of wetlands to prevent the loss of habitat due to inundation from sea level rise and other impacts associated with climate change.

**16201.** It is the policy of the state to ensure no net loss and long-term gain in the quantity, quality, and permanence of wetlands acreage and values in California.