

AMENDED IN SENATE JUNE 25, 2002

AMENDED IN SENATE JUNE 10, 2002

AMENDED IN ASSEMBLY MAY 14, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1393

Introduced by Assembly Member Thomson

February 23, 2001

An act to amend Sections 175.5, 13207, 13301, 13323, ~~13328, and 13391.5~~ and 13328 of, to add Sections 13228.14 and 13228.15 to, and to repeal Section 13302 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1393, as amended, Thomson. Water quality.

(1) Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with regulatory authority over water quality. Existing law prohibits a member of the state board or a regional board from participating in certain board actions in which the board member has a direct personal financial interest, as defined by a provision in the Government Code that has been repealed.

This bill, instead, would prohibit those board members from participating in those specified board actions in which those members have a financial interest within the meaning of the Political Reform Act of 1974.

(2) The act authorizes, or in certain cases requires, a panel of a regional board to conduct proceedings.

This bill would delete those provisions and would authorize a regional board to conduct certain hearings or investigations by means of a panel of 3 or more members of the regional board. The bill would require any final action in the matter to be taken by the regional board and would authorize that board to take additional evidence and to adopt, with or without revision, or reject, the proposed decision of the panel. The bill would authorize the members of a regional board, or their designees, to carry out prehearing conferences for the purposes of addressing matters, including but not limited to, exploration of settlement possibilities, clarification of issues, and objections to evidence. The bill would provide that no party who appears before a panel or at a prehearing conference is precluded from appearing before the regional board at any subsequent hearing relating to the matter.

~~(3) The act defines the term “hazardous substance” for the purposes of carrying out a specified bay protection and toxic cleanup program. This bill would correct a cross-reference in that provision.~~

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

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 175.5 of the Water Code is amended to
- 2 read:
- 3 175.5. (a) No member of the board shall participate in any
- 4 board action pursuant to Article 2 (commencing with Section
- 5 13320) of Chapter 5 of Division 7 which involves himself or
- 6 herself or any waste discharger with which the board member is
- 7 connected as a director, officer or employee, or in which the board
- 8 member has a financial interest in the decision within the meaning
- 9 of Section 87103 of the Government Code.
- 10 (b) No board member shall participate in any proceeding
- 11 before any regional board as a consultant or in any other capacity
- 12 on behalf of any waste discharger.
- 13 (c) Upon the request of any person, or on the Attorney
- 14 General’s own initiative, the Attorney General may file a
- 15 complaint in the superior court for the county in which the board
- 16 has its principal office alleging that a board member has
- 17 knowingly violated this section and the facts upon which the
- 18 allegation is based and asking that the member be removed from
- 19 office. Further proceedings shall be in accordance as near as may



1 be with rules governing civil actions. If after trial the court finds
2 that the board member has knowingly violated this section it shall
3 pronounce judgment that the member be removed from office.

4 SEC. 2. Section 13207 of the Water Code is amended to read:

5 13207. (a) No member of a regional board shall participate in
6 any board action pursuant to Article 4 (commencing with Section
7 13260) of Chapter 4, or Article 1 (commencing with Section
8 13300) of Chapter 5, of this division which involves himself or
9 herself or any waste discharger with which he or she is connected
10 as a director, officer or employee, or in which he or she has a
11 financial interest in the decision within the meaning of Section
12 87103 of the Government Code.

13 (b) No board member shall participate in any proceeding
14 before any regional board or the state board as a consultant or in
15 any other capacity on behalf of any waste discharger.

16 (c) Upon the request of any person, or on the Attorney
17 General's own initiative, the Attorney General may file a
18 complaint in the superior court for the county in which the regional
19 board has its principal office alleging that a board member has
20 knowingly violated this section and the facts upon which the
21 allegation is based and asking that the member be removed from
22 office. Further proceedings shall be in accordance as near as may
23 be with rules governing civil actions. If after trial the court finds
24 that the board member has knowingly violated this section it shall
25 pronounce judgment that the member be removed from office.

26 SEC. 3. Section 13228.14 is added to the Water Code, to read:

27 13228.14. (a) Any hearing or investigation by a regional
28 board relating to investigating the quality of waters of the state,
29 prescribing waste discharge requirements, issuing cease and desist
30 orders, requiring the cleanup or abatement of waste, or imposing
31 administrative civil liabilities or penalties may be conducted by a
32 panel of three or more members of the regional board, but any final
33 action in the matter shall be taken by the regional board. Due notice
34 of any hearing shall be given to all affected persons. After a
35 hearing, the panel shall report its proposed decision and order to
36 the regional board and shall supply a copy to all parties who
37 appeared at the hearing and requested a copy.

38 (b) No party who appears before the panel is precluded from
39 appearing before the regional board at any subsequent hearing
40 relating to the matter. Members of the panel are not disqualified



1 from sitting as members of the regional board in deciding the
2 matter.

3 (c) The regional board, after making an independent review of
4 the record and taking additional evidence as may be necessary,
5 may adopt, with or without revision, or reject, the proposed
6 decision and order of the panel.

7 SEC. 4. Section 13228.15 is added to the Water Code, to read:

8 13228.15. The members of a regional board, or their
9 designees, with respect to matters within the regional board's
10 jurisdiction, may carry out prehearing conferences to address any
11 of the matters described in subdivision (b) of Section 11511.5 of
12 the Government Code. No party who appears at a prehearing
13 conference is precluded from appearing before the regional board
14 at any subsequent hearing relating to the matter.

15 SEC. 5. Section 13301 of the Water Code is amended to read:

16 13301. When a regional board finds that a discharge of waste
17 is taking place, or threatening to take place, in violation of
18 requirements or discharge prohibitions prescribed by the regional
19 board or the state board, the board may issue an order to cease and
20 desist and direct that those persons not complying with the
21 requirements or discharge prohibitions (a) comply forthwith, (b)
22 comply in accordance with a time schedule set by the board, or (c)
23 in the event of a threatened violation, take appropriate remedial or
24 preventive action. In the event of an existing or threatened
25 violation of waste discharge requirements in the operation of a
26 community sewer system, cease and desist orders may restrict or
27 prohibit the volume, type, or concentration of waste that might be
28 added to that system by dischargers who did not discharge into the
29 system prior to the issuance of the cease and desist order. Cease and
30 desist orders may be issued directly by a board, after notice and
31 hearing.

32 SEC. 6. Section 13302 of the Water Code is repealed.

33 SEC. 7. Section 13323 of the Water Code is amended to read:

34 13323. (a) Any executive officer of a regional board may
35 issue a complaint to any person on whom administrative civil
36 liability may be imposed pursuant to this article. The complaint
37 shall allege the act or failure to act that constitutes a violation of
38 law, the provision of law authorizing civil liability to be imposed
39 pursuant to this article, and the proposed civil liability.



1 (b) The complaint shall be served by personal notice or
2 certified mail, and shall inform the party so served that a hearing
3 shall be conducted within 60 days after the party has been served.
4 The person who has been issued a complaint may waive the right
5 to a hearing, in which case the regional board shall not conduct a
6 hearing.

7 (c) Orders imposing administrative civil liability shall become
8 effective and final upon issuance thereof, and are not subject to
9 review by any court or agency except as provided by Sections
10 13320 and 13330. Payment shall be made not later than 30 days
11 from the date on which the order is issued. The time for payment
12 is extended during the period in which a person who is subject to
13 an order seeks review under Section 13320. Copies of these orders
14 shall be served by personal service or by registered mail upon the
15 party served with the complaint and upon other persons who
16 appeared at the hearing and requested a copy.

17 SEC. 8. Section 13328 of the Water Code is amended to read:
18 13328. After the time for judicial review under Section 13330
19 has expired, the state board may apply to the clerk of the
20 appropriate court in the county in which the civil liability or
21 penalty was imposed, for a judgment to collect the civil liability
22 or penalty. The application, which shall include a certified copy of
23 the state board or regional board action, constitutes a sufficient
24 showing to warrant issuance of the judgment. The court clerk shall
25 enter the judgment immediately in conformity with the
26 application. The judgment so entered has the same force and effect
27 as, and is subject to all the provisions of law relating to, a judgment
28 in a civil action, and may be enforced in the same manner as any
29 other judgment of the court in which it is entered.

30 ~~SEC. 9. Section 13391.5 of the Water Code is amended to~~
31 ~~read:~~

32 ~~13391.5. The definitions in this section govern the~~
33 ~~construction of this chapter.~~

34 ~~(a) "Enclosed bays" means indentations along the coast which~~
35 ~~enclose an area of oceanic water within distinct headlands or~~
36 ~~harbor works. "Enclosed bays" include all bays where the~~
37 ~~narrowest distance between the headlands or outermost harbor~~
38 ~~works is less than 75 percent of the greatest dimension of the~~
39 ~~enclosed portion of the bay. "Enclosed bays" include, but are not~~
40 ~~limited to, Humboldt Bay, Bodega Harbor, Tomales Bay, Drake's~~



1 Estero, San Francisco Bay, Morro Bay, Los Angeles-Long Beach
2 Harbor, Upper and Lower Newport Bay, Mission Bay, and San
3 Diego Bay. For the purposes of identifying, characterizing, and
4 ranking toxic hot spots pursuant to this chapter, Monterey Bay and
5 Santa Monica Bay shall also be considered to be enclosed bays.

6 (b) “Estuaries” means waters, including coastal lagoons,
7 located at the mouths of streams which serve as mixing zones for
8 fresh and ocean waters. Coastal lagoons and mouths of streams
9 which are temporarily separated from the ocean by sandbars shall
10 be considered as estuaries. Estuarine waters shall be considered to
11 extend from a bay or the open ocean to a point upstream where
12 there is no significant mixing of fresh water and sea water.
13 Estuarine waters include, but are not limited to, the
14 Sacramento-San Joaquin Delta, as defined in Section 12220,
15 Suisun Bay, Carquinez Strait downstream to the Carquinez
16 Bridge, and appropriate areas of the Smith, Mad, Eel, Noyo,
17 Russian, Klamath, San Diego, and Otay Rivers.

18 (c) “Health risk assessment” means an analysis which
19 evaluates and quantifies the potential human exposure to a
20 pollutant that bioaccumulates or may bioaccumulate in edible fish,
21 shellfish, or wildlife. “Health risk assessment” includes an
22 analysis of both individual and population wide health risks
23 associated with anticipated levels of human exposure, including
24 potential synergistic effects of toxic pollutants and impacts on
25 sensitive populations.

26 (d) “Sediment quality objective” means that level of a
27 constituent in sediment which is established with an adequate
28 margin of safety, for the reasonable protection of the beneficial
29 uses of water or the prevention of nuisances.

30 (e) “Toxic hot spots” means locations in enclosed bays,
31 estuaries, or any adjacent waters in the “contiguous zone” or the
32 “ocean,” as defined in Section 502 of the Clean Water Act (33
33 U.S.C. Sec. 1362), the pollution or contamination of which affects
34 the interests of the state, and where hazardous substances have
35 accumulated in the water or sediment to levels which (1) may pose
36 a substantial present or potential hazard to aquatic life, wildlife,
37 fisheries, or human health, or (2) may adversely affect the
38 beneficial uses of the bay, estuary, or ocean waters as defined in
39 water quality control plans, or (3) exceeds adopted water quality
40 or sediment quality objectives.



1 ~~(f) “Hazardous substances” has the same meaning as defined~~
2 ~~in subdivision (g) of Section 25281 of the Health and Safety Code.~~
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