

AMENDED IN SENATE MARCH 25, 2008

SENATE BILL

No. 1176

Introduced by Senator Perata

February 8, 2008

An act to amend Sections 13167, 13168, 13201, 13205, 13241, 13242, 13385, and 13388 of, and to add Section 13232 to, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1176, as amended, Perata. Water quality.

(1) Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal national pollutant discharge elimination system (NPDES) permit program established by the federal Clean Water Act, and the Porter-Cologne Water Quality Control Act (state act). Existing law designates the state board as the state water pollution control agency for all purposes stated in the Clean Water Act and any other federal act. Federal regulations provide for program revision and withdrawal and the voluntary transfer of program responsibilities when a state program no longer complies with the requirements of the Clean Water Act and the state fails to take corrective action.

This bill would make legislative findings and declarations related to the regional boards and their responsibilities under the Clean Water Act and the state act.

The bill would authorize the state board to order the commencement of withdrawal proceedings with regard to a regional board's program authority on the state board's own initiative or in response to a petition from an interested person. If the state board concludes that a regional

board has substantially and continually failed to administer water quality programs in conformity with the appropriate laws and regulations, the state board would be required to list the deficiencies in the program, and provide the regional board a reasonable time to take corrective action. If the regional board fails to take the appropriate corrective action within the prescribed timeframe, the state board would be required to either withdraw the regional board's program authority or set a schedule for review of program authority after a probationary period. The bill would require any withdrawal order to state whether the state board or another regional board would become the implementing agency within the jurisdiction of the former regional board.

(2) The state act establishes 9 regions, each governed by a California regional water quality control board comprised of 9 members appointed by the Governor, with prescribed experience or associations. The state act requires that each regional board member represent and act on behalf of all the people and reside or have a principal place of business within the region. Under the state act, if an appointment cannot be made for the county government member because of a restriction under existing law on income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements, the state act authorizes the appointment of persons not specifically associated with any category.

This bill would revise those provisions to establish regional boards of 7 members, to be appointed by the Governor. Each member would be required to be appointed on the basis of his or her demonstrated interest and proven ability in the field of water quality, including water pollution prevention, water pollution control, and understanding of water pollution and related water resource management problems in their region, and his or her ability to attend substantially all meetings of the regional board, and to actively discharge all duties and responsibilities of a member of the regional board.

(3) The state act provides that each member of a regional board receive \$100 for each day that member is engaged in the performance of official duties, except as specified, and that the total compensation received by members of each regional board not exceed, in any one fiscal year, the sum of \$13,500.

This bill would provide that each regional board member may receive \$500 for each day that member is engaged in the performance of official duties. The bill would provide that the total compensation received by a regional board member in any fiscal year may not exceed \$30,000.

(4) The state act prohibits a person from being a member of the state board or a regional board if that person receives, or has received, during the previous 2 years a significant portion of his or her income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements.

This bill would revise this provision with regard to regional boards by specifying that no person shall be a regional board member if that person receives, or has received, during the previous 2 years a significant portion of his or her income directly or indirectly from any person subject to waste discharge requirements, or applicants for waste discharge requirements, and the requirements govern discharges within the jurisdiction of that regional board.

(5) The state act requires the regional boards to submit annual budgets to the state board, and to prepare an annual budget concerning its activities and the activities of the regional boards.

This bill would require the regional boards to submit workplans associated with those budgets and an assessment of progress in terms of the prior year's workplans. The state board would be required to prepare and distribute a model workplan for use by the regional boards and to post the workplans and assessments on its Internet Web site. The state board would be required to take into consideration the workplans and assessments in connection with the preparation of the annual budget.

(6) The state act requires the regional boards to establish water quality objectives in water quality control plans that ensure the reasonable protection of beneficial uses and the prevention of nuisance. In doing so, the state board is required to consider specified factors, including economic considerations.

This bill would specify that the economic considerations required to be undertaken by the state board shall include an assessment of the overall economic value of improved water quality.

(7) The state act requires the implementation program for achieving water quality objectives to include a time schedule for the actions to be taken to achieve the objectives.

This bill would require each regional board to ensure that its water quality control plan include time schedules for all these actions by September 1, 2009, and to review and, as needed, update annually those time schedules.

(8) The state act requires the state board to report and update information on its Internet Web site, at least annually on or before January 1, regarding its enforcement activities. The state act requires

the state board to include in the information a compilation of the number of waste discharge requirements in the previous calendar year and an analysis of the effectiveness of current enforcement policies.

This bill instead would require the state board to report and update information on its Internet Web site, at least annually on or before April 1, regarding all enforcement activities undertaken by the state board and the regional boards pursuant to the Clean Water Act or the state act in the previous calendar year. The bill would require the state board to include in the information a compilation of the number and type of violations of waste discharge requirements and requirements of waivers of waste discharge requirements in the previous calendar year and an analysis of the effectiveness of, and omissions in, current enforcement efforts and policies.

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. The Legislature hereby finds and declares all of
2 the following:

3 (a) The 1949 Dickey Water Pollution Act established nine
4 regional water boards located in each of the major California
5 watersheds. The regional boards have primary responsibility for
6 overseeing and enforcing the state's pollution abatement programs.
7 The act established five gubernatorial appointees, representing
8 water supply, irrigated agriculture, industry, and municipal and
9 county government in that region, to serve on each regional water
10 board. This number has since grown to nine members and includes
11 a public member seat, two members with special competence in
12 water quality, and a seat for a member associated with a recreation,
13 fish, or wildlife nongovernmental organization.

14 (b) The complexity of water quality and water supply laws and
15 technologies in the intervening 58 years has grown exponentially,
16 while the expertise and low pay on the regional boards have
17 remained relatively constant. The significant complexity of
18 problems and laws brings an increased need for expertise on the
19 regional board, yet the substantive requirements for the regional
20 board member position have not similarly increased. The large
21 number of appointments (81 regional board members) makes

1 tracking the members' performance difficult, heightening the need
2 for the clear, strong expertise of each board member.

3 (c) The federal Clean Water Act (33 U.S.C. Sec. 1252 et seq.)
4 envisions delegation of water pollution control responsibility to
5 the states. Federal regulations establish procedures for approving
6 a state program and the responsibilities of that program. Provisions
7 for withdrawal of that authority are found at Section 123.63 of
8 Part 40 of the Code of Federal Regulations and provide that the
9 United States Environmental Protection Agency may withdraw
10 federal approval when a state program no longer complies with
11 the requirements of the Clean Water Act and the state fails to take
12 corrective action. These circumstances include the state's failure
13 to issue permits, act on violations of permits or other program
14 requirements, seek adequate enforcement penalties or collect
15 administrative fines when imposed, inspect and monitor activities
16 subject to regulation, or develop an adequate regulatory program
17 for developing water quality-based effluent limits in national
18 pollutant discharge elimination system permits.

19 (d) The Porter-Cologne Water Quality Control Act (Division 7
20 commencing with Section 13000) of the Water Code) designates
21 the state board as the state water pollution control agency for all
22 purposes stated in the Clean Water Act and any other federal act.
23 Section 13260 of the act places responsibility on the regional
24 boards for ensuring that waste discharge reports are filed by any
25 person discharging, or proposing to discharge, waste in any region
26 that could affect the quality of "waters of the state," and that
27 appropriate regulatory action is taken after the filing of the reports.
28 The act defines "waters of the state" as "any surface water or
29 groundwater, including saline waters, within the boundaries of the
30 state."

31 (e) California is the only state in the nation with autonomous
32 regional water boards that implement the Clean Water Act program
33 requirements.

34 (f) Numerous state and federal mandates are not being met in
35 California. They include the following:

36 (1) Section 305(b) of the Clean Water Act requires each state
37 to prepare a water quality report at least every two years; California
38 has not submitted a report to the United States Environmental
39 Protection Agency since 2002. Moreover, despite the mandate that
40 all waters are to be assessed, the 2002 document reports only on

1 the health of one-third of the state’s lakes and reservoirs, 22 percent
2 of the state’s coastal shoreline miles, and a mere 15 percent of
3 river and stream miles.

4 (2) Although the Porter-Cologne Water Quality Control Act
5 requires the regional boards to regulate all discharges to surface
6 water or groundwater that “could affect the quality of the waters
7 of the state,” every one of the regional boards has failed to regulate
8 one or more major sources of polluted runoff into surface water,
9 and there is virtually no such regulation of discharges to
10 groundwater. As a result, polluted runoff is implicated in more
11 than 76 percent of the waters identified as “impaired” in California.

12 (3) The state has established approved cleanup plans for only
13 a handful of the water bodies listed as “impaired” for one or more
14 pollutants, and only a small fraction of those waters have since
15 been deemed “clean.” Many of these listings will not have cleanup
16 plans before 2019, with no deadlines set for actual cleanup of the
17 waters listed.

18 (4) A February 2000 report by the Legislative Analyst’s Office
19 identified numerous deficiencies in permit issuance, inspections,
20 inconsistencies in enforcement across the state, inadequate
21 enforcement followup, and other problems, most of which continue
22 today.

23 (5) An August 2006 state board enforcement report to the
24 Legislature concluded that the water board staff does not detect
25 violations for several months after they occur and showed
26 significantly variable numbers of enforcement actions and violation
27 rates across regional water boards.

28 SEC. 2. Section 13167 of the Water Code is amended to read:

29 13167. (a) The state board shall implement, with the assistance
30 of the regional boards, a public information program on matters
31 involving water quality, and shall place and maintain on its Internet
32 Web site, in a format accessible to the general public, an
33 information file on water quality monitoring, assessment, research,
34 standards, regulation, enforcement, and other pertinent matters.

35 (b) The information file described in subdivision (a) shall
36 include, but need not be limited to, copies of permits, waste
37 discharge requirements, waivers, enforcement actions, and petitions
38 for review of these actions pursuant to this division. The file shall
39 include copies of water quality control plans and policies, including
40 any relevant management agency agreements pursuant to this

1 chapter and Chapter 4 (commencing with Section 13200), and
2 monitoring data and assessment information, or shall identify
3 Internet links to that information. The state board, in consultation
4 with the regional boards, shall ensure that the information is
5 available in single locations, rather than separately by region, and
6 that the information is presented in a manner easily understandable
7 by the general public.

8 (c) The state board shall continuously report and update
9 information on its Internet Web site, but at a minimum, annually
10 on or before ~~January~~ *April 1*, regarding ~~its enforcement activities~~
11 *all enforcement activities undertaken by the state board or a*
12 *regional board pursuant to the Clean Water Act (33 U.S.C. Sec.*
13 *1251 et seq.) or this division in the previous calendar year.* The
14 information shall include, *but need not be limited to*, all of the
15 following:

16 (1) A compilation of the number *and type* of violations of waste
17 discharge requirements in the previous calendar year, including
18 stormwater enforcement violations.

19 (2) *A compilation of the number and type of violations of*
20 *requirements of waivers of waste discharge requirements in the*
21 *previous calendar year.*

22 ~~(2)~~

23 (3) A record of the formal and informal compliance and
24 enforcement actions taken for each violation, including stormwater
25 enforcement actions.

26 ~~(3)~~

27 (4) An analysis of the effectiveness of ~~current enforcement~~, *and*
28 *omissions in, current enforcement efforts and policies*, including
29 mandatory minimum penalties.

30 SEC. 3. Section 13168 of the Water Code is amended to read:

31 13168. The state board shall allocate to the regional boards
32 from funds appropriated to the state board that portion that may
33 be necessary for the administrative expenses of the regional boards.
34 The regional boards shall submit annual budgets to the state board,
35 along with workplans associated with those budgets and an
36 assessment of progress in terms of the prior year's workplans. The
37 state board shall prepare and distribute a model workplan for use
38 by the regional boards, and shall review and, as needed, update
39 annually the model workplan. All workplans and assessments of
40 progress shall be posted on the state board's Internet Web site.

1 Subject to Chapter 3 (commencing with Section 13290) of Part 3
2 of Division 3 of Title 2 of the Government Code and any other
3 laws giving the Department of Finance fiscal and budgetary control
4 over state departments generally, the state board shall prepare an
5 annual budget concerning its activities and the activities of the
6 regional boards, taking into consideration the workplans and
7 assessments described in this section.

8 SEC. 4. Section 13201 of the Water Code is amended to read:

9 13201. (a) There is a regional board for each of the regions
10 described in Section 13200. Each board shall consist of seven
11 members appointed by the Governor, each of whom shall represent,
12 and act on behalf of, all the people, and shall reside or have a
13 principal place of business within the region.

14 (b) Each member shall be appointed on the basis of his or her
15 demonstrated interest and proven ability in the field of water
16 quality, including water pollution prevention, water pollution
17 control, and understanding of the water pollution and related water
18 resource management problems in the applicable region.

19 (c) Each member shall be appointed on the basis of his or her
20 ability to attend substantially all meetings of the regional board,
21 and to actively discharge all duties and responsibilities of a member
22 of the regional board.

23 (d) All persons appointed to a regional board are subject to
24 Senate confirmation, but are not required to appear before any
25 committee of the Senate for purposes of that confirmation, unless
26 specifically requested to appear by the Senate Committee on Rules.

27 (e) Insofar as practicable, appointments shall be made in a
28 manner that results in representation on the board from all parts
29 of the region.

30 (f) The reduction in the number of members on each regional
31 board required by amendments made to this section during the
32 second year of the 2007–08 Regular Session of the Legislature
33 shall be achieved according to the ordinary expiration of terms of
34 incumbents and other vacancies. After a regional board consists
35 of only seven members, an individual subsequently appointed to
36 fill a vacancy shall possess the qualifications specified in this
37 section.

38 SEC. 5. Section 13205 of the Water Code is amended to read:

39 13205. Each member of a regional board shall receive five
40 hundred dollars (\$500) for each day during which that member is

1 engaged in the performance of official duties, including preparation
2 for regional board meetings, except that no member shall be
3 entitled to receive the five hundred dollars (\$500) compensation
4 if the member otherwise receives compensation from other sources
5 for performing those duties. The total compensation received by
6 members of each regional board shall not exceed, in any one fiscal
7 year, the sum of thirty thousand dollars (\$30,000). A member may
8 decline compensation. The annual compensation provided by this
9 section shall be increased in any fiscal year in which a general
10 salary increase is provided for state employees. The amount of the
11 increase provided by this section shall be comparable to, but shall
12 not exceed, the percentage of the general salary increases provided
13 for state employees during that fiscal year. In addition to the
14 compensation, each member shall be reimbursed for necessary
15 traveling and other expenses incurred in the performance of official
16 duties.

17 SEC. 6. Section 13232 is added to the Water Code, to read:

18 13232. (a) (1) The state board may order the commencement
19 of regional board program withdrawal proceedings on its own
20 initiative or in response to a petition from an interested person
21 alleging the substantial and continuing failure of a regional board
22 to comply with the requirements of this division or the federal
23 Clean Water Act (33 U.S.C. Sec. 1252 et seq.). These
24 circumstances include, but are not limited to, the following:

25 (A) Substantial and continuing failure to exercise adequate
26 control over activities required to be regulated under applicable
27 state or federal law, including failure to issue permits, waste
28 discharge requirements, or waivers of waste discharge
29 requirements.

30 (B) Repeated issuance of permits, waste discharge requirements,
31 or waivers of waste discharge requirements that do not conform
32 to the requirements of applicable state or federal law.

33 (C) Substantial and continuing failure to conduct adequate
34 oversight over discharges subject to memoranda of agreement or
35 understanding with other agencies.

36 (D) Substantial and continuing failure to comply with the public
37 participation requirements of applicable state or federal law.

38 (E) Substantial and continuing failure to meet the discharger
39 identification, inspection, penalty enforcement, and other
40 requirements of the regional board's enforcement program.

1 (F) Substantial and continuing failure to develop an adequate
2 regulatory program for developing water quality-based effluent
3 limits in national pollution discharge elimination system (NPDES)
4 permits.

5 (2) The state board shall respond in writing to any petition to
6 commence regional board program withdrawal proceedings, and
7 may conduct an informal investigation of the allegations in the
8 petition to determine whether cause exists to commence
9 proceedings under this section. The state board's order
10 commencing proceedings under this section shall fix a time and
11 place for the commencement of the hearing and shall specify the
12 allegations against the regional board that are to be considered at
13 the hearing. Within 30 days the regional board shall admit or deny
14 these allegations in a written answer. The party seeking withdrawal
15 of the regional board's program shall have the burden of producing
16 the evidence in a hearing under this paragraph.

17 (b) If the state board concludes that the regional board has
18 substantially and continually failed to administer mandated state
19 and federal water quality programs in conformity with the
20 appropriate laws and regulations, the state board shall list the
21 deficiencies in the program or programs and provide the regional
22 board a reasonable time, not to exceed 90 days, to take such
23 appropriate corrective action as the state board determines
24 necessary.

25 (c) Corrective actions shall include specific requirements for
26 issuing permits, conducting more frequent inspections and
27 evaluations, and taking additional enforcement actions, in addition
28 to other actions necessary for improving regional board
29 performance.

30 (d) Within the timeframe prescribed by the state board, the
31 regional board shall take the appropriate corrective action that is
32 required by the state board, and shall file with the state board and
33 all parties a statement certified by the regional board that
34 appropriate corrective action has been taken and that funding has
35 been established to support continuation of each corrective action,
36 as needed. The state board may require a further showing in
37 addition to the certified statement.

38 (e) If the regional board fails to take the appropriate corrective
39 action and file a certified statement within the timeframe prescribed
40 by the state board, the state board shall issue a supplementary order

1 that either withdraws the regional board’s program authority, or
2 sets a schedule for review of program authority after a probationary
3 period during which additional corrective actions shall be required.

4 (f) During the probationary period, the state board or another
5 regional board shall assume partial or total responsibility for the
6 specified regional board’s duties.

7 (g) If at the conclusion of the probationary period, the regional
8 board has taken and certified appropriate corrective action, the
9 state board shall issue a supplementary order stating that the
10 regional board’s authority to implement state and federal law is
11 not withdrawn.

12 (h) (1) If, at the end of the probationary period, or the end of
13 the state board’s withdrawal proceedings if there is no probationary
14 period, the state board determines that the regional board has
15 substantially and continually failed to meet the applicable
16 requirements of state or federal law, the state board shall withdraw
17 authority from the regional board, notwithstanding any other
18 provision of this division. The withdrawal order shall state whether
19 the state board, or another regional board, or both, shall become
20 the implementing agency within the jurisdiction of the former
21 regional board.

22 (2) Withdrawal of authority shall continue until the regional
23 board makes, in a public hearing, certified demonstrations
24 necessary to ensure immediate and continued compliance with
25 applicable state and federal law.

26 (i) Withdrawal of authority under this section does not relieve
27 any person from complying with the requirements of state or
28 federal law; nor does it affect the validity of actions by the state
29 prior to withdrawal.

30 SEC. 7. Section 13241 of the Water Code is amended to read:

31 13241. (a) Each regional board shall establish water quality
32 objectives in water quality control plans that in its judgment will
33 ensure the reasonable protection of beneficial uses and the
34 prevention of nuisance; however, it is recognized that it may be
35 possible for the quality of water to be changed to some degree
36 without unreasonably affecting beneficial uses.

37 (b) Factors to be considered by a regional board in establishing
38 water quality objectives shall include, but not necessarily be limited
39 to, all of the following:

40 (1) Past, present, and probable future beneficial uses of water.

1 (2) Environmental characteristics of the hydrographic unit under
2 consideration, including the quality of water available thereto.

3 (3) Water quality conditions that could reasonably be achieved
4 through the coordinated control of all factors which affect water
5 quality in the area.

6 (4) Economic considerations, which shall include an assessment
7 of the overall economic value of improved water quality.

8 (5) The need for developing housing within the region.

9 (6) The need to develop and use recycled water.

10 SEC. 8. Section 13242 of the Water Code is amended to read:

11 13242. The program of implementation for achieving water
12 quality objectives shall include, but not be limited to:

13 (a) A description of the nature of actions which are necessary
14 to achieve the objectives, including recommendations for
15 appropriate action by any entity, public or private.

16 (b) A time schedule for the actions to be taken. Each regional
17 board shall ensure that its water quality control plan includes time
18 schedules for all these actions by September 1, 2009, and shall
19 review and, as needed, update annually these time schedules.

20 (c) A description of surveillance to be undertaken to determine
21 compliance with objectives.

22 SEC. 9. Section 13385 of the Water Code is amended to read:

23 13385. (a) Any person who violates any of the following shall
24 be liable civilly in accordance with this section:

25 (1) Section 13375 or 13376.

26 (2) Any waste discharge requirements or dredged or fill material
27 permit issued pursuant to this chapter or any water quality
28 certification issued pursuant to Section 13160.

29 (3) Any requirements established pursuant to Section 13383.

30 (4) Any order or prohibition issued pursuant to Section 13243
31 or Article 1 (commencing with Section 13300) of Chapter 5, if the
32 activity subject to the order or prohibition is subject to regulation
33 under this chapter.

34 (5) Any requirements of Section 301, 302, 306, 307, 308, 318,
35 401, or 405 of the Clean Water Act, as amended.

36 (6) Any requirement imposed in a pretreatment program
37 approved pursuant to waste discharge requirements issued under
38 Section 13377 or approved pursuant to a permit issued by the
39 administrator.

1 (b) Civil liability may be imposed by the superior court in an
2 amount not to exceed the sum of both of the following:

3 (1) Twenty-five thousand dollars (\$25,000) for each day in
4 which the violation occurs.

5 (2) Where there is a discharge, any portion of which is not
6 susceptible to cleanup or is not cleaned up, and the volume
7 discharged but not cleaned up exceeds 1,000 gallons, an additional
8 liability not to exceed twenty-five dollars (\$25) multiplied by the
9 number of gallons by which the volume discharged but not cleaned
10 up exceeds 1,000 gallons.

11 The Attorney General, upon request of a regional board or the
12 state board, shall petition the superior court to impose the liability.

13 (c) Civil liability may be imposed administratively by the state
14 board or a regional board pursuant to Article 2.5 (commencing
15 with Section 13323) of Chapter 5 in an amount not to exceed the
16 sum of both of the following:

17 (1) Ten thousand dollars (\$10,000) for each day in which the
18 violation occurs.

19 (2) Where there is a discharge, any portion of which is not
20 susceptible to cleanup or is not cleaned up, and the volume
21 discharged but not cleaned up exceeds 1,000 gallons, an additional
22 liability not to exceed ten dollars (\$10) multiplied by the number
23 of gallons by which the volume discharged but not cleaned up
24 exceeds 1,000 gallons.

25 (d) For purposes of subdivisions (b) and (c), “discharge”
26 includes any discharge to navigable waters of the United States,
27 any introduction of pollutants into a publicly owned treatment
28 works, or any use or disposal of sewage sludge.

29 (e) In determining the amount of any liability imposed under
30 this section, the regional board, the state board, or the superior
31 court, as the case may be, shall take into account the nature,
32 circumstances, extent, and gravity of the violation or violations,
33 whether the discharge is susceptible to cleanup or abatement, the
34 degree of toxicity of the discharge, and, with respect to the violator,
35 the ability to pay, the effect on its ability to continue its business,
36 any voluntary cleanup efforts undertaken, any prior history of
37 violations, the degree of culpability, economic benefit or savings,
38 if any, resulting from the violation, and other matters that justice
39 may require. At a minimum, liability shall be assessed at a level

1 that recovers the economic benefits, if any, derived from the acts
2 that constitute the violation.

3 (f) (1) Except as provided in paragraph (2), for the purposes of
4 this section, a single operational upset that leads to simultaneous
5 violations of more than one pollutant parameter shall be treated
6 as a single violation.

7 (2) (A) For the purposes of subdivisions (h) and (i), a single
8 operational upset in a wastewater treatment unit that treats
9 wastewater using a biological treatment process shall be treated
10 as a single violation, even if the operational upset results in
11 violations of more than one effluent limitation and the violations
12 continue for a period of more than one day, if all of the following
13 apply:

14 (i) The discharger demonstrates all of the following:

15 (I) The upset was not caused by wastewater treatment operator
16 error and was not due to discharger negligence.

17 (II) But for the operational upset of the biological treatment
18 process, the violations would not have occurred nor would they
19 have continued for more than one day.

20 (III) The discharger carried out all reasonable and immediately
21 feasible actions to reduce noncompliance with the applicable
22 effluent limitations.

23 (ii) The discharger is implementing an approved pretreatment
24 program, if so required by federal or state law.

25 (B) Subparagraph (A) only applies to violations that occur
26 during a period for which the regional board has determined that
27 violations are unavoidable, but in no case may that period exceed
28 30 days.

29 (g) Remedies under this section are in addition to, and do not
30 supersede or limit, any other remedies, civil or criminal, except
31 that no liability shall be recoverable under Section 13261, 13265,
32 13268, or 13350 for violations for which liability is recovered
33 under this section.

34 (h) (1) Notwithstanding any other provision of this division,
35 and except as provided in subdivisions (j), (k), and (l), a mandatory
36 minimum penalty of three thousand dollars (\$3,000) shall be
37 assessed for each serious violation.

38 (2) For the purposes of this section, a “serious violation” means
39 any waste discharge that violates the effluent limitations contained
40 in the applicable waste discharge requirements for a Group II

1 pollutant, as specified in Appendix A to Section 123.45 of Title
2 40 of the Code of Federal Regulations, by 20 percent or more or
3 for a Group I pollutant, as specified in Appendix A to Section
4 123.45 of Title 40 of the Code of Federal Regulations, by 40
5 percent or more.

6 (i) (1) Notwithstanding any other provision of this division,
7 and except as provided in subdivisions (j), (k), and (l), a mandatory
8 minimum penalty of three thousand dollars (\$3,000) shall be
9 assessed for each violation whenever the person does any of the
10 following four or more times in any period of six consecutive
11 months, except that the requirement to assess the mandatory
12 minimum penalty shall not be applicable to the first three
13 violations:

14 (A) Violates a waste discharge requirement effluent limitation.

15 (B) Fails to file a report pursuant to Section 13260.

16 (C) Files an incomplete report pursuant to Section 13260.

17 (D) Violates a toxicity effluent limitation contained in the
18 applicable waste discharge requirements where the waste discharge
19 requirements do not contain pollutant-specific effluent limitations
20 for toxic pollutants.

21 (2) For the purposes of this section, a “period of six consecutive
22 months” means the period commencing on the date that one of the
23 violations described in this subdivision occurs and ending 180
24 days after that date.

25 (j) Subdivisions (h) and (i) do not apply to any of the following:

26 (1) A violation caused by one or any combination of the
27 following:

28 (A) An act of war.

29 (B) An unanticipated, grave natural disaster or other natural
30 phenomenon of an exceptional, inevitable, and irresistible
31 character, the effects of which could not have been prevented or
32 avoided by the exercise of due care or foresight.

33 (C) An intentional act of a third party, the effects of which could
34 not have been prevented or avoided by the exercise of due care or
35 foresight.

36 (D) (i) The operation of a new or reconstructed wastewater
37 treatment unit during a defined period of adjusting or testing, not
38 to exceed 90 days for a wastewater treatment unit that relies on a
39 biological treatment process and not to exceed 30 days for any

1 other wastewater treatment unit, if all of the following requirements
2 are met:

3 (I) The discharger has submitted to the regional board, at least
4 30 days in advance of the operation, an operations plan that
5 describes the actions the discharger will take during the period of
6 adjusting and testing, including steps to prevent violations and
7 identifies the shortest reasonable time required for the period of
8 adjusting and testing, not to exceed 90 days for a wastewater
9 treatment unit that relies on a biological treatment process and not
10 to exceed 30 days for any other wastewater treatment unit.

11 (II) The regional board has not objected in writing to the
12 operations plan.

13 (III) The discharger demonstrates that the violations resulted
14 from the operation of the new or reconstructed wastewater
15 treatment unit and that the violations could not have reasonably
16 been avoided.

17 (IV) The discharger demonstrates compliance with the
18 operations plan.

19 (V) In the case of a reconstructed wastewater treatment unit,
20 the unit relies on a biological treatment process that is required to
21 be out of operation for at least 14 days in order to perform the
22 reconstruction, or the unit is required to be out of operation for at
23 least 14 days and, at the time of the reconstruction, the cost of
24 reconstructing the unit exceeds 50 percent of the cost of replacing
25 the wastewater treatment unit.

26 (ii) For the purposes of this section, “wastewater treatment unit”
27 means a component of a wastewater treatment plant that performs
28 a designated treatment function.

29 (2) (A) Except as provided in subparagraph (B), a violation of
30 an effluent limitation where the waste discharge is in compliance
31 with either a cease and desist order issued pursuant to Section
32 13301 or a time schedule order issued pursuant to Section 13300,
33 if all of the following requirements are met:

34 (i) The cease and desist order or time schedule order is issued
35 after January 1, 1995, but not later than July 1, 2000, specifies the
36 actions that the discharger is required to take in order to correct
37 the violations that would otherwise be subject to subdivisions (h)
38 and (i), and the date by which compliance is required to be achieved
39 and, if the final date by which compliance is required to be
40 achieved is later than one year from the effective date of the cease

1 and desist order or time schedule order, specifies the interim
2 requirements by which progress towards compliance will be
3 measured and the date by which the discharger will be in
4 compliance with each interim requirement.

5 (ii) The discharger has prepared and is implementing in a timely
6 and proper manner, or is required by the regional board to prepare
7 and implement, a pollution prevention plan that meets the
8 requirements of Section 13263.3.

9 (iii) The discharger demonstrates that it has carried out all
10 reasonable and immediately feasible actions to reduce
11 noncompliance with the waste discharge requirements applicable
12 to the waste discharge and the executive officer of the regional
13 board concurs with the demonstration.

14 (B) Subdivisions (h) and (i) shall become applicable to a waste
15 discharge on the date the waste discharge requirements applicable
16 to the waste discharge are revised and reissued pursuant to Section
17 13380, unless the regional board does all of the following on or
18 before that date:

19 (i) Modifies the requirements of the cease and desist order or
20 time schedule order as may be necessary to make it fully consistent
21 with the reissued waste discharge requirements.

22 (ii) Establishes in the modified cease and desist order or time
23 schedule order a date by which full compliance with the reissued
24 waste discharge requirements shall be achieved. For the purposes
25 of this subdivision, the regional board may not establish this date
26 later than five years from the date the waste discharge requirements
27 were required to be reviewed pursuant to Section 13380. If the
28 reissued waste discharge requirements do not add new effluent
29 limitations or do not include effluent limitations that are more
30 stringent than those in the original waste discharge requirements,
31 the date shall be the same as the final date for compliance in the
32 original cease and desist order or time schedule order or five years
33 from the date that the waste discharge requirements were required
34 to be reviewed pursuant to Section 13380, whichever is earlier.

35 (iii) Determines that the pollution prevention plan required by
36 clause (ii) of subparagraph (A) is in compliance with the
37 requirements of Section 13263.3 and that the discharger is
38 implementing the pollution prevention plan in a timely and proper
39 manner.

1 (3) A violation of an effluent limitation where the waste
2 discharge is in compliance with either a cease and desist order
3 issued pursuant to Section 13301 or a time schedule order issued
4 pursuant to Section 13300 or 13308, if all of the following
5 requirements are met:

6 (A) The cease and desist order or time schedule order is issued
7 on or after July 1, 2000, and specifies the actions that the discharger
8 is required to take in order to correct the violations that would
9 otherwise be subject to subdivisions (h) and (i).

10 (B) The regional board finds that, for one of the following
11 reasons, the discharger is not able to consistently comply with one
12 or more of the effluent limitations established in the waste
13 discharge requirements applicable to the waste discharge:

14 (i) The effluent limitation is a new, more stringent, or modified
15 regulatory requirement that has become applicable to the waste
16 discharge after the effective date of the waste discharge
17 requirements and after July 1, 2000, new or modified control
18 measures are necessary in order to comply with the effluent
19 limitation, and the new or modified control measures cannot be
20 designed, installed, and put into operation within 30 calendar days.

21 (ii) New methods for detecting or measuring a pollutant in the
22 waste discharge demonstrate that new or modified control measures
23 are necessary in order to comply with the effluent limitation and
24 the new or modified control measures cannot be designed, installed,
25 and put into operation within 30 calendar days.

26 (iii) Unanticipated changes in the quality of the municipal or
27 industrial water supply available to the discharger are the cause
28 of unavoidable changes in the composition of the waste discharge,
29 the changes in the composition of the waste discharge are the cause
30 of the inability to comply with the effluent limitation, no alternative
31 water supply is reasonably available to the discharger, and new or
32 modified measures to control the composition of the waste
33 discharge cannot be designed, installed, and put into operation
34 within 30 calendar days.

35 (iv) The discharger is a publicly owned treatment works located
36 in Orange County that is unable to meet effluent limitations for
37 biological oxygen demand, suspended solids, or both, because the
38 publicly owned treatment works meets all of the following criteria:

1 (I) Was previously operating under modified secondary
2 treatment requirements pursuant to Section 301(h) of the Clean
3 Water Act (33 U.S.C. Sec. 1311(h)).

4 (II) Did vote on July 17, 2002, not to apply for a renewal of the
5 modified secondary treatment requirements.

6 (III) Is in the process of upgrading its treatment facilities to
7 meet the secondary treatment standards required by Section
8 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec.
9 1311(b)(1)(B)).

10 (C) The regional board establishes a time schedule for bringing
11 the waste discharge into compliance with the effluent limitation
12 that is as short as possible, taking into account the technological,
13 operational, and economic factors that affect the design,
14 development, and implementation of the control measures that are
15 necessary to comply with the effluent limitation. For the purposes
16 of this subdivision, the time schedule may not exceed five years
17 in length, except that the time schedule may not exceed 10 years
18 in length for the upgrade described in subclause (III) of clause (iv)
19 of subparagraph (B). If the time schedule exceeds one year from
20 the effective date of the order, the schedule shall include interim
21 requirements and the dates for their achievement. The interim
22 requirements shall include both of the following:

23 (i) Effluent limitations for the pollutant or pollutants of concern.

24 (ii) Actions and milestones leading to compliance with the
25 effluent limitation.

26 (D) The discharger has prepared and is implementing in a timely
27 and proper manner, or is required by the regional board to prepare
28 and implement, a pollution prevention plan pursuant to Section
29 13263.3.

30 (k) (1) In lieu of assessing all or a portion of the mandatory
31 minimum penalties pursuant to subdivisions (h) and (i) against a
32 publicly owned treatment works serving a small community, the
33 state board or the regional board may elect to require the publicly
34 owned treatment works to spend an equivalent amount towards
35 the completion of a compliance project proposed by the publicly
36 owned treatment works, if the state board or the regional board
37 finds all of the following:

38 (A) The compliance project is designed to correct the violations
39 within five years.

1 (B) The compliance project is in accordance with the
2 enforcement policy of the state board, excluding any provision in
3 the policy that is inconsistent with this section.

4 (C) The publicly owned treatment works has prepared a
5 financing plan to complete the compliance project.

6 (2) For the purposes of this subdivision, “a publicly owned
7 treatment works serving a small community” means a publicly
8 owned treatment works serving a population of 10,000 persons or
9 fewer or a rural county, with a financial hardship as determined
10 by the state board after considering such factors as median income
11 of the residents, rate of unemployment, or low population density
12 in the service area of the publicly owned treatment works.

13 (l) (1) In lieu of assessing penalties pursuant to subdivision (h)
14 or (i), the state board or the regional board, with the concurrence
15 of the discharger, may direct a portion of the penalty amount to
16 be expended on a supplemental environmental project in
17 accordance with the enforcement policy of the state board. If the
18 penalty amount exceeds fifteen thousand dollars (\$15,000), the
19 portion of the penalty amount that may be directed to be expended
20 on a supplemental environmental project may not exceed fifteen
21 thousand dollars (\$15,000) plus 50 percent of the penalty amount
22 that exceeds fifteen thousand dollars (\$15,000).

23 (2) For the purposes of this section, a “supplemental
24 environmental project” means an environmentally beneficial project
25 that a person agrees to undertake, with the approval of the regional
26 board, that would not be undertaken in the absence of an
27 enforcement action under this section.

28 (3) This subdivision applies to the imposition of penalties
29 pursuant to subdivision (h) or (i) on or after January 1, 2003,
30 without regard to the date on which the violation occurs.

31 (m) The Attorney General, upon request of a regional board or
32 the state board, shall petition the appropriate court to collect any
33 liability or penalty imposed pursuant to this section. Any person
34 who fails to pay on a timely basis any liability or penalty imposed
35 under this section shall be required to pay, in addition to that
36 liability or penalty, interest, attorney’s fees, costs for collection
37 proceedings, and a quarterly nonpayment penalty for each quarter
38 during which the failure to pay persists. The nonpayment penalty
39 shall be in an amount equal to 20 percent of the aggregate amount

1 of the person's penalty and nonpayment penalties that are unpaid
2 as of the beginning of the quarter.

3 (n) (1) Subject to paragraph (2), funds collected pursuant to
4 this section shall be deposited in the State Water Pollution Cleanup
5 and Abatement Account.

6 (2) (A) Notwithstanding any other provision of law, moneys
7 collected for a violation of a water quality certification in
8 accordance with paragraph (2) of subdivision (a) or for a violation
9 of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in
10 accordance with paragraph (5) of subdivision (a) shall be deposited
11 in the Waste Discharge Permit Fund and separately accounted for
12 in that fund.

13 (B) The funds described in subparagraph (A) shall be expended
14 by the state board, upon appropriation by the Legislature, to assist
15 regional boards, and other public agencies with authority to clean
16 up waste or abate the effects of the waste, in cleaning up or abating
17 the effects of the waste on waters of the state or for the purposes
18 authorized in Section 13443.

19 (o) The amendments made to subdivisions (f), (h), (i) and (j)
20 during the second year of the 2001–02 Regular Session apply only
21 to violations that occur on or after January 1, 2003.

22 SEC. 10. Section 13388 of the Water Code is amended to read:

23 13388. (a) Notwithstanding any other provision of this division
24 or Section 175, no person shall be a member of the state board if
25 that person receives or has received during the previous two years
26 a significant portion of his or her income directly or indirectly
27 from any person subject to waste discharge requirements or
28 applicants for waste discharge requirements pursuant to this
29 chapter.

30 (b) Notwithstanding any other provision of this division, no
31 person shall be a member of a regional board if that person
32 receives, or has received, during the previous two years, a
33 significant portion of his or her income directly or indirectly from
34 any person subject to waste discharge requirements, or applicants
35 for waste discharge requirements, and the requirements govern
36 discharges pursuant to this chapter within the jurisdiction of that
37 regional board.

O