

AMENDED IN SENATE MARCH 26, 2012

**SENATE BILL**

**No. 1306**

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**Introduced by Senator Blakeslee**

February 23, 2012

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An act to amend Section 57004 of the Health and Safety Code, and to amend Section 13000 of the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 1306, as amended, Blakeslee. State Water Resources Control Board.

Under existing law, the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board (state board) and the 9 California regional water quality control boards are the principal state agencies with responsibility for the coordination and control of water quality in the state. The act requires the state board to formulate and adopt state policies for water quality control, and requires the regional boards to adopt regional water quality control plans in compliance with the state policies.

This bill would add findings and declarations to the act.

Existing law requires the California Environmental Protection Agency, or a board, department, or office within the agency, to enter into an agreement with the National Academy of Sciences, the University of California, the California State University, or any similar scientific institution of higher learning, or any combination of those entities, or with a scientist or group of scientists of comparable stature and qualifications that are recommended by the President of the University of California, to conduct an external scientific peer review of the scientific basis for any proposed rule, as defined, to include a policy adopted by the state board that has the effect of a regulation and that is

adopted in order to implement or make effective a statute, and prescribes procedures for conducting that scientific peer review, as specified.

This bill would *specifically* include the ~~issuance, denial, or revocation, on a statewide, regionwide, or industrywide basis, of waste discharge requirements, permits, and waivers, adoption of general permit application requirements for stormwater discharges~~ by the state board and would add a conditional waiver of waste discharge requirements from irrigated lands adopted by a regional water quality control board to the definition of rule for the purposes of the above provisions.

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 57004 of the Health and Safety Code is  
2 amended to read:

3 57004. (a) For purposes of this section, the following terms  
4 have the following meanings:

5 (1) “Rule” means ~~either~~ any of the following:

6 (A) A regulation, as defined in Section 11342.600 of the  
7 Government Code.

8 (B) A policy adopted by the State Water Resources Control  
9 Board pursuant to the Porter-Cologne Water Quality Control Act  
10 (Division 7 (commencing with Section 13000) of the Water Code)  
11 that has the effect of a regulation and that is adopted in order to  
12 implement or make effective a statute, including, but not limited  
13 to, ~~the issuance, denial, or revocation, on a statewide, regionwide,~~  
14 ~~or industrywide basis, of waste discharge requirements and permits~~  
15 ~~pursuant to Sections 13263 and 13377 of the Water Code and~~  
16 ~~waivers issued pursuant to Section 13269 of the Water Code~~  
17 *adoption of general permit application requirements for*  
18 *stormwater discharges to implement Section 402(p) of the Federal*  
19 *Water Pollution Control Act (33 U.S.C. Sec. 1342(p)).*

20 (C) *A conditional waiver of waste discharge requirements from*  
21 *irrigated lands, pursuant to Section 13269 of the Water Code,*  
22 *adopted by a regional water quality control board.*

23 (2) “Scientific basis” and “scientific portions” mean those  
24 foundations of a rule that are premised upon, or derived from,  
25 empirical data or other scientific findings, conclusions, or

1 assumptions establishing a regulatory level, standard, or other  
2 requirement for the protection of public health or the environment.

3 (b) The agency, or a board, department, or office within the  
4 agency, shall enter into an agreement with the National Academy  
5 of Sciences, the University of California, the California State  
6 University, or any similar scientific institution of higher learning,  
7 any combination of those entities, or with a scientist or group of  
8 scientists of comparable stature and qualifications that is  
9 recommended by the President of the University of California, to  
10 conduct an external scientific peer review of the scientific basis  
11 for any rule proposed for adoption by any board, department, or  
12 office within the agency. The scientific basis or scientific portion  
13 of a rule adopted pursuant to Chapter 6.6 (commencing with  
14 Section 25249.5) of Division 20 or Chapter 3.5 (commencing with  
15 Section 39650) of Division 26 shall be deemed to have complied  
16 with this section if it complies with the peer review processes  
17 established pursuant to these statutes.

18 (c) No person may serve as an external scientific peer reviewer  
19 for the scientific portion of a rule if that person participated in the  
20 development of the scientific basis or scientific portion of the rule.

21 (d) No board, department, or office within the agency shall take  
22 any action to adopt the final version of a rule unless all of the  
23 following conditions are met:

24 (1) The board, department, or office submits the scientific  
25 portions of the proposed rule, along with a statement of the  
26 scientific findings, conclusions, and assumptions on which the  
27 scientific portions of the proposed rule are based and the supporting  
28 scientific data, studies, and other appropriate materials, to the  
29 external scientific peer review entity for its evaluation.

30 (2) The external scientific peer review entity, within the  
31 timeframe agreed upon by the board, department, or office and the  
32 external scientific peer review entity, prepares a written report that  
33 contains an evaluation of the scientific basis of the proposed rule.  
34 If the external scientific peer review entity finds that the board,  
35 department, or office has failed to demonstrate that the scientific  
36 portion of the proposed rule is based upon sound scientific  
37 knowledge, methods, and practices, the report shall state that  
38 finding, and the reasons explaining the finding, within the  
39 agreed-upon timeframe. The board, department, or office may  
40 accept the finding of the external scientific peer review entity, in

1 whole, or in part, and may revise the scientific portions of the  
2 proposed rule accordingly. If the board, department, or office  
3 disagrees with any aspect of the finding of the external scientific  
4 peer review entity, it shall explain, and include as part of the  
5 rulemaking record, its basis for arriving at such a determination  
6 in the adoption of the final rule, including the reasons why it has  
7 determined that the scientific portions of the proposed rule are  
8 based on sound scientific knowledge, methods, and practices.

9 (e) The requirements of this section do not apply to any  
10 emergency regulation adopted pursuant to subdivision (b) of  
11 Section 11346.1 of the Government Code.

12 (f) Nothing in this section shall be interpreted to, in any way,  
13 limit the authority of a board, department, or office within the  
14 agency to adopt a rule pursuant to the requirements of the statute  
15 that authorizes or requires the adoption of the rule.

16 SEC. 2. Section 13000 of the Water Code is amended to read:

17 13000. (a) The Legislature finds and declares that the people  
18 of the state have a primary interest in the conservation, control,  
19 and utilization of the water resources of the state, and that the  
20 quality of all the waters of the state shall be protected for use and  
21 enjoyment by the people of the state.

22 (b) The Legislature further finds and declares that activities and  
23 factors which may affect the quality of the waters of the state shall  
24 be regulated to attain the highest water quality which is reasonable,  
25 considering all demands being made and to be made on those  
26 waters and the total values involved, beneficial and detrimental,  
27 economic and social, tangible and intangible.

28 (c) The Legislature further finds and declares that the health,  
29 safety, and welfare of the people of the state requires that there be  
30 a statewide program for the control of the quality of all the waters  
31 of the state; that the state must be prepared to exercise its full power  
32 and jurisdiction to protect the quality of waters in the state from  
33 degradation originating inside or outside the boundaries of the  
34 state; that the waters of the state are increasingly influenced by  
35 interbasin water development projects and other statewide  
36 considerations; that factors of precipitation, topography, population,  
37 recreation, agriculture, industry, and economic development vary  
38 from region to region within the state; and that the statewide  
39 program for water quality control can be most effectively

1 administered regionally, within a framework of statewide  
2 coordination and policy.

3 (d) The Legislature further finds and declares as follows:

4 (1) That regulations intended to attain the highest water quality  
5 within reason are most likely to be successful when developed in  
6 collaboration with entities subject to those regulations.

7 (2) That compliance and the intended water quality objectives  
8 will be more readily achieved when regulated entities have ample  
9 opportunity to participate in the development and promulgation  
10 of programs and regulations.

11 (3) That failure to consider the compliance challenges of  
12 regulated entities and to provide a cost-effective and  
13 technologically feasible compliance pathway will likely result in  
14 the inability of regulated entities to satisfy programmatic  
15 requirements and will significantly diminish the efficacy of the  
16 program or regulation.