

AMENDED IN SENATE MAY 22, 2012

AMENDED IN SENATE MAY 2, 2012

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 1306

Introduced by Senator Blakeslee

February 23, 2012

An act to amend Section 57004 of the Health and Safety 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.

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~~ *add* the 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, and would require ~~the above~~ *these* provisions to apply only when fees are available to cover the state board’s or a regional board’s costs of complying with these provisions. This bill would also deem the state board or a regional board to have complied with the above provisions if a scientific peer review has been done on the scientific basis or scientific portion of an adopted rule.

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 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 statute.~~
- 14 (C) *The* adoption of general permit application requirements
- 15 for stormwater discharges *by the State Water Resources Control*
- 16 *Board* to implement Section 402(p) of the Federal Water Pollution
- 17 Control Act (33 U.S.C. Sec. 1342(p)).
- 18 (E)

1 (D) A conditional waiver of waste discharge requirements from
2 irrigated lands, pursuant to Section 13269 of the Water Code,
3 adopted by a regional water quality control board.

4 (2) “Scientific basis” and “scientific portions” mean those
5 foundations of a rule that are premised upon, or derived from,
6 empirical data or other scientific findings, conclusions, or
7 assumptions establishing a regulatory level, standard, or other
8 requirement for the protection of public health or the environment.

9 (b) The agency, or a board, department, or office within the
10 agency, shall enter into an agreement with the National Academy
11 of Sciences, the University of California, the California State
12 University, or any similar scientific institution of higher learning,
13 any combination of those entities, or with a scientist or group of
14 scientists of comparable stature and qualifications that is
15 recommended by the President of the University of California, to
16 conduct an external scientific peer review of the scientific basis
17 for any rule proposed for adoption by any board, department, or
18 office within the agency. The scientific basis or scientific portion
19 of a rule adopted pursuant to Chapter 6.6 (commencing with
20 Section 25249.5) of Division 20 or Chapter 3.5 (commencing with
21 Section 39650) of Division 26 shall be deemed to have complied
22 with this section if it complies with the peer review processes
23 established pursuant to these statutes. The State Water Resources
24 Control Board or a regional water quality control board shall be
25 deemed to have complied with this section if a scientific peer
26 review has been done on the scientific basis or scientific portion
27 of an adopted rule.

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

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

34 (1) The board, department, or office submits the scientific
35 portions of the proposed rule, along with a statement of the
36 scientific findings, conclusions, and assumptions on which the
37 scientific portions of the proposed rule are based and the supporting
38 scientific data, studies, and other appropriate materials, to the
39 external scientific peer review entity for its evaluation.

1 (2) The external scientific peer review entity, within the
2 timeframe agreed upon by the board, department, or office and the
3 external scientific peer review entity, prepares a written report that
4 contains an evaluation of the scientific basis of the proposed rule.
5 If the external scientific peer review entity finds that the board,
6 department, or office has failed to demonstrate that the scientific
7 portion of the proposed rule is based upon sound scientific
8 knowledge, methods, and practices, the report shall state that
9 finding, and the reasons explaining the finding, within the
10 agreed-upon timeframe. The board, department, or office may
11 accept the finding of the external scientific peer review entity, in
12 whole, or in part, and may revise the scientific portions of the
13 proposed rule accordingly. If the board, department, or office
14 disagrees with any aspect of the finding of the external scientific
15 peer review entity, it shall explain, and include as part of the
16 rulemaking record, its basis for arriving at such a determination
17 in the adoption of the final rule, including the reasons why it has
18 determined that the scientific portions of the proposed rule are
19 based on sound scientific knowledge, methods, and practices.

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

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

27 (g) This section shall apply to a rule defined in subparagraphs
28 ~~(B)~~ and (C) and (D) of paragraph (1) of subdivision (a) only when
29 fees are available to cover the State Water Resources Control
30 Board's or a regional water quality control board's costs of
31 complying with this section.