

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1707

Introduced by Assembly Member Wilk

February 13, 2014

An act to amend Section ~~13201~~ of the ~~Water~~ 57004 of the *Health and Safety Code*, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 1707, as amended, Wilk. Water quality: ~~organization and membership of regional boards~~ *scientific peer review*.

Under existing law, the State Water Resources Control Board and the 9 California regional water quality control boards regulate water quality in accordance with the Porter-Cologne Water Quality Control Act and the Federal Water Pollution Control Act. Among other things, the state board and the regional boards prescribe waste discharge requirements for the discharge of waste in accordance with the federal national pollutant discharge elimination system permit program.

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 prescribed. Under existing law, a proposed rule is defined to include, among other things, 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.

This bill would add the adoption of a total maximum daily load to the definition of “rule” for the purposes of the above provisions.

~~Existing law requires the State Water Resources Control Board and the 9 California regional water quality control boards to 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). The state act requires regional boards to consist of 7 members appointed by the Governor, 6 of them on the basis of demonstrated interest or proven ability in the field of water quality and one as a public member not specifically associated with any enumerated qualification:~~

~~This bill would make a nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-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.

13 (C) A total maximum daily load adopted to implement Section
14 303(d) of the Federal Water Pollution Control Act (33 U.S.C. Sec.
15 1313(d)).

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

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

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

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

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

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

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

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

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

14 ~~SECTION 1. Section 13201 of the Water Code is amended to~~
15 ~~read:~~

16 ~~13201. (a) There is a regional board for each of the regions~~
17 ~~described in Section 13200. Each board shall consist of seven~~
18 ~~members appointed by the Governor, each of whom shall represent,~~
19 ~~and act on behalf of, all the people and shall reside or have a~~
20 ~~principal place of business within the region.~~

21 ~~(b) Except as specified in subdivision (c), each member shall~~
22 ~~be appointed on the basis of his or her demonstrated interest or~~
23 ~~proven ability in the field of water quality, including water~~
24 ~~pollution control, water resource management, water use, or water~~
25 ~~protection. The Governor shall consider appointments from the~~
26 ~~public and nonpublic sectors. In regard to appointments from the~~
27 ~~nonpublic sector, the Governor shall consider including members~~
28 ~~from key economic sectors in a given region, such as agriculture,~~
29 ~~industry, commercial activities, forestry, and fisheries.~~

30 ~~(c) At least one member shall be appointed as a public member~~
31 ~~who is not required to meet the criteria established pursuant to~~
32 ~~subdivision (b).~~

33 ~~(d) All persons appointed to a regional board shall be subject~~
34 ~~to Senate confirmation, but shall not be required to appear before~~
35 ~~any committee of the Senate for purposes of such confirmation~~
36 ~~unless specifically requested to appear by the Senate Committee~~
37 ~~on Rules.~~

38 ~~(e) Insofar as practicable, appointments shall be made in such~~
39 ~~manner as to result in representation on the board from all parts~~
40 ~~of the region.~~

1 ~~(f) Insofar as practicable, appointments shall be made in a~~
2 ~~manner as to result in representation on the board from diverse~~
3 ~~experiential backgrounds.~~

4 ~~(g) Each member shall be appointed on the basis of his or her~~
5 ~~ability to attend substantially all meetings of the board and to~~
6 ~~actively discharge all duties and responsibilities of a member of~~
7 ~~the board.~~

8 ~~(h) The reduction in the number of members of each regional~~
9 ~~board required by the act that added this subdivision shall be~~
10 ~~achieved according to the ordinary expiration of the terms of~~
11 ~~incumbents and other vacancies. Notwithstanding Section 13202~~
12 ~~the Governor shall not fill a vacancy on a regional board until the~~
13 ~~number of members serving on that regional board falls below~~
14 ~~seven members. When the numbers of members serving on the~~
15 ~~regional board falls below seven members, the Governor shall~~
16 ~~appoint or reappoint individuals pursuant to this section.~~