

AMENDED IN ASSEMBLY MAY 1, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1707**

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**Introduced by Assembly Member Wilk**

February 13, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1707, as amended, Wilk. Water quality: 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. *regulations.*

This bill would ~~add the adoption of a total maximum daily load to the definition of “rule” for the purposes of the above provisions.~~ *require the state board to post on its Internet Web site a copy of the external scientific peer review conducted for regulations of the state board.*

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~~ *either* 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.

21 (b) The agency, or a board, department, or office within the  
22 agency, shall enter into an agreement with the National Academy  
23 of Sciences, the University of California, the California State  
24 University, or any similar scientific institution of higher learning,  
25 any combination of those entities, or with a scientist or group of  
26 scientists of comparable stature and qualifications that is  
27 recommended by the President of the University of California, to  
28 conduct an external scientific peer review of the scientific basis  
29 for any rule proposed for adoption by any board, department, or

1 office within the agency. The scientific basis or scientific portion  
2 of a rule adopted pursuant to Chapter 6.6 (commencing with  
3 Section 25249.5) of Division 20 or Chapter 3.5 (commencing with  
4 Section 39650) of *Part 2 of* Division 26 shall be deemed to have  
5 complied with this section if it complies with the peer review  
6 processes established pursuant to these statutes.

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

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

13 (1) The board, department, or office submits the scientific  
14 portions of the proposed rule, along with a statement of the  
15 scientific findings, conclusions, and assumptions on which the  
16 scientific portions of the proposed rule are based and the supporting  
17 scientific data, studies, and other appropriate materials, to the  
18 external scientific peer review entity for its evaluation.

19 (2) The external scientific peer review entity, within the  
20 timeframe agreed upon by the board, department, or office and the  
21 external scientific peer review entity, prepares a written report that  
22 contains an evaluation of the scientific basis of the proposed rule.  
23 If the external scientific peer review entity finds that the board,  
24 department, or office has failed to demonstrate that the scientific  
25 portion of the proposed rule is based upon sound scientific  
26 knowledge, methods, and practices, the report shall state that  
27 finding, and the reasons explaining the finding, within the  
28 agreed-upon timeframe. The board, department, or office may  
29 accept the finding of the external scientific peer review entity, in  
30 whole, or in part, and may revise the scientific portions of the  
31 proposed rule accordingly. If the board, department, or office  
32 disagrees with any aspect of the finding of the external scientific  
33 peer review entity, it shall explain, and include as part of the  
34 rulemaking record, its basis for arriving at such a determination  
35 in the adoption of the final rule, including the reasons why it has  
36 determined that the scientific portions of the proposed rule are  
37 based on sound scientific knowledge, methods, and practices.

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

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

5 (g) *For any proposed State Water Resources Control Board*  
6 *rule described by subparagraph (A) of paragraph (1) of subdivision*  
7 *(a), the state board shall post a copy of the external scientific peer*  
8 *review conducted pursuant to subdivision (b) on its Internet Web*  
9 *site.*