

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2446

Introduced by Assembly Member Gordon

February 19, 2016

~~An act relating to natural resources.~~ *An act to amend Section 116700 of the Health and Safety Code, and to amend Sections 13321, 13330, and 13361 of the Water Code, relating to the State Water Resources Control Board.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2446, as amended, Gordon. ~~Natural resources: protection.~~ *State Water Resources Control Board: judicial review.*

(1) Existing law, the Porter-Cologne Water Quality Control Act, within 30 days of any action or failure to act by a California regional water quality control board under specified law, authorizes an aggrieved person to petition the State Water Resources Control Board to review that action or failure to act. Existing law authorizes the state board, in the case of such a review, upon notice and hearing, if a hearing is requested, to stay in whole or in part the effect of the decision and order of a regional board or of the state board.

This bill would expand that provision to authorize the state board to issue a stay in the case of review by the state board of a decision or order issued under authority delegated to an officer or employee of the state board where the state board by regulation has authorized a petition for reconsideration by the state board. The bill would authorize any aggrieved party, within 30 days of any order of the state board issuing or denying a stay, to file with the superior court a petition for writ of mandate.

The act authorizes an aggrieved party to file with the superior court a petition for writ of mandate for review of a decision or order issued by the state board or a regional board, and requires those proceedings to be governed by specified law. Existing law, except as specified, requires the court to exercise its independent judgment on the evidence in cases involving the judicial review of a decision or order of the state board, or a decision or order of a regional board for which the state board denies review under the act.

This bill, except as specified, would prohibit any legal or equitable process from issuing in any proceeding in any court against the state board, a regional board, or any officer of the state board or a regional board to review, prevent, or enjoin any adjudicative proceeding under the act, or a decision or order by the state board or a regional board before a decision or order is issued and the procedures for administrative review of that decision or order have been exhausted.

(2) Existing law, the California Safe Drinking Water Act, requires the state board to administer provisions relating to the regulation of drinking water to protect public health. The state board's duties include, but are not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, and adopting and enforcing regulations. Existing law requires the state board to appoint a deputy director to oversee the issuance and enforcement of public water system permits and delegates certain authorities of the state board to the deputy director. The act authorizes the deputy director to issue an order directing certain actions whenever the deputy director determines that a person has violated or is violating the act, or any permit, regulation, or standard issued or adopted pursuant to the act. The act authorizes an aggrieved party 30 days after service of a copy of the order or decision to file with the superior court a petition for a writ of mandate for review of the order or decision. The act requires that the evidence before the court consist of all relevant evidence that, in the judgment of the court, should be considered to effectuate and implement the act and requires, in every case, the court to exercise its independent judgment on the evidence. The act prohibits a failure to file an action from precluding a party from challenging the reasonableness and validity of the decision or order in specified judicial proceedings.

This bill would provide that a decision or order of the state board is not subject to review by any court if no aggrieved party petitions for a

writ of mandate within 30 days after service of a copy of an order or decision issued by the state board. The bill would eliminate the requirement that the evidence before the court consist of all relevant evidence that, in the judgment of the court, should be considered to effectuate and implement the act.

~~Existing law declares that resource conservation is of fundamental importance to the prosperity and welfare of the people of this state.~~

~~This bill would declare the intent of the Legislature to enact legislation that would protect the state's land and water resources.~~

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 116700 of the Health and Safety Code is
2 amended to read:

3 116700. (a) Within 30 days after service of a copy of an order
4 issued by the ~~department, any state board~~, an aggrieved party may
5 file with the superior court a petition for a writ of mandate for
6 review thereof. ~~Failure to file an action shall not preclude a party~~
7 ~~from challenging the reasonableness and validity of a decision or~~
8 ~~order of the department in any judicial proceedings brought to~~
9 ~~enforce the decision or order or for any civil or criminal remedy~~
10 ~~authorized by this chapter. order.~~

11 (b) ~~The evidence before the court shall consist of all relevant~~
12 ~~evidence that, in the judgment of the court, should be considered~~
13 ~~to effectuate and implement the provisions of this chapter. In every~~
14 ~~case, the court shall exercise its independent judgment on the~~
15 ~~evidence.~~

16 (c) Except as otherwise provided in this section, subdivisions
17 (e) and (f) of Section 1094.5 of the Code of Civil Procedure shall
18 govern proceedings pursuant to this section.

19 (d) *If no aggrieved party petitions for a writ of mandate within*
20 *the time provided by this section, the decision or order of the state*
21 *board is not subject to review by any court.*

22 SEC. 2. Section 13321 of the Water Code is amended to read:

23 13321. (a) In the case of a review by the state board under
24 ~~Section 13320, 13320~~ or review by the state board of a decision
25 or order issued under authority delegated to an officer or employee
26 of the state board where the state board by regulation has

1 *authorized a petition for reconsideration, the state board, upon*
2 *notice and hearing, if a hearing is requested, may stay in whole or*
3 *in part the effect of the decision-and or order of a regional board*
4 *or of the state board.*

5 *(b) Within 30 days of any order of the state board issuing or*
6 *denying a stay, any aggrieved party may file with the superior*
7 *court a petition for writ of mandate.*

8 *(c) If the state board or the superior court grants a stay under*
9 *this section, the stay may be made effective as of the effective date*
10 *of the regional board or state board decision or order.*

11 ~~(b)~~
12 ~~(d) If a petition is filed with the superior court to review a~~
13 ~~decision of the state board, under Section 13330, any stay in effect~~
14 ~~at the time of the filing of the petition shall remain in effect by~~
15 ~~operation of law for a period of 20 days from the date of the filing~~
16 ~~of that petition.~~

17 ~~(e) If the superior court grants a stay pursuant to a petition for~~
18 ~~review of a decision of the state board denying a request for a stay~~
19 ~~with respect to waste discharge requirements, the stay may be~~
20 ~~made effective as of the effective date of the waste discharge~~
21 ~~requirements.~~

22 *SEC. 3. Section 13330 of the Water Code is amended to read:*

23 13330. (a) Not later than 30 days from the date of service of
24 a copy of a decision or order issued by the state board under this
25 division, other than a decision or order issued pursuant to Article
26 7 (commencing with Section 13550) of Chapter 7, any aggrieved
27 party may file with the superior court a petition for writ of mandate
28 for review ~~thereof.~~ *of the decision or order.* An aggrieved party
29 must file a petition for reconsideration with the state board to
30 exhaust that party's administrative remedies only if the initial
31 decision or order is issued under authority delegated to an officer
32 or employee of the state board and the state board by regulation
33 has authorized a petition for reconsideration.

34 (b) A party aggrieved by a final decision or order of a regional
35 board subject to review under Section 13320 may obtain review
36 of the decision or order of the regional board in the superior court
37 by filing in the court a petition for writ of mandate not later than
38 30 days from the date on which the state board denies review.

39 (c) The time for filing an action or proceeding subject to Section
40 21167 of the Public Resources Code for a person who seeks review

1 of the regional board's decision or order under Section 13320, or
2 who seeks reconsideration under a state board regulation
3 authorizing a petition for reconsideration, shall commence upon
4 the state board's completion of that review or reconsideration.

5 (d) If no aggrieved party petitions for writ of mandate within
6 the time provided by this section, a decision or order of the state
7 board or a regional board shall not be subject to review by any
8 court.

9 (e) Except as otherwise provided herein, ~~in this section~~, Section
10 1094.5 of the Code of Civil Procedure shall govern proceedings
11 for which petitions are filed pursuant to this section. For the
12 purposes of subdivision (c) of Section 1094.5 of the Code of Civil
13 Procedure, the court shall exercise its independent judgment on
14 the evidence in any case involving the judicial review of a decision
15 or order of the state board issued under Section 13320, or a decision
16 or order of a regional board for which the state board denies review
17 under Section 13320, other than a decision or order issued under
18 Section 13323.

19 (f) *Except as provided in this section, no legal or equitable*
20 *process shall issue in any proceeding in any court against the state*
21 *board, a regional board, or any officer of the state board or a*
22 *regional board to review, prevent, or enjoin any adjudicative*
23 *proceeding under this division. Except as provided in this section*
24 *and Section 13321, no legal or equitable process shall issue in*
25 *any proceeding in any court against the state board, a regional*
26 *board, or any officer of the state board or a regional board to*
27 *review, prevent, or enjoin a decision or order by the state board*
28 *or a regional board before a decision or order is issued and the*
29 *procedures for administrative review of that decision or order*
30 *have been exhausted.*

31 (f)

32 (g) A party aggrieved by a decision or order issued by the state
33 board under Article 7 (commencing with Section 13550) of Chapter
34 7 may petition for reconsideration or judicial review in accordance
35 with Chapter 4 (commencing with Section 1120) of Part 1 of
36 Division 2.

37 (g)

38 (h) For purposes of this section, a decision or order includes a
39 final action in an adjudicative proceeding and an action subject to
40 Section 11352 of the Government Code, but does not include an

1 action subject to Section 11353 of the Government Code or the
 2 adoption, amendment, or repeal of a regulation under Chapter 3.5
 3 (commencing with Section 11340) of Part 1 of Division 3 of Title
 4 2 of the Government Code.

5 *SEC. 4. Section 13361 of the Water Code is amended to read:*

6 13361. (a) Every civil action brought under the provisions of
 7 this division at the request of a regional board or the state board
 8 shall be brought by the Attorney General in the name of the people
 9 of the State of California and any ~~such~~ *of those* actions relating to
 10 the same discharge may be joined or consolidated.

11 (b) Any civil action brought pursuant to this division shall be
 12 brought in a county in which the discharge is made, or proposed
 13 to be made. However, any action by or against a city, city and
 14 county, county, or other public agency shall, upon motion of either
 15 party, be transferred to a county or city and county not a party to
 16 the action or to a county or city and county other than that in which
 17 the city or public agency is located.

18 (c) In any civil action brought pursuant to this division in which
 19 a *regional board or the state board seeks a* temporary restraining
 20 order, preliminary injunction, or permanent ~~injunction is sought,~~
 21 *injunction*, it shall not be necessary to allege or prove at any stage
 22 of the proceeding that irreparable damage will occur should the
 23 temporary restraining order, preliminary injunction, or permanent
 24 injunction not be issued, or that the remedy at law is inadequate,
 25 and the temporary restraining order, preliminary injunction, or
 26 permanent injunction shall issue without ~~such those~~ allegations
 27 and ~~without such~~ proof.

28 ~~SECTION 1. It is the intent of the Legislature to enact~~
 29 ~~legislation that would protect the state's land and water resources.~~