

AMENDED IN SENATE AUGUST 1, 2016

AMENDED IN ASSEMBLY MAY 10, 2016

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 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. 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 generally require the state board to issue or deny the stay within 90 days of receipt of a

request for stay, as specified, and would deem the request for stay denied if the state board fails to issue or deny the stay within the prescribed applicable period. The bill would authorize any aggrieved party, within 30 days of any order of the state board issuing or denying a stay or within 30 days of a stay being deemed denied, to file with the superior court a petition for writ of mandate and would specify the law that governs those proceedings.

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 would require the state board to order or deny reconsideration on a petition not later than 90 days from the date the state board adopts the decision or order. The 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 or employee 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, a regional board, or any officer or employee of 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.

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

3 116700. (a) Within 30 days after service of a copy of an order
4 issued by the state board, an aggrieved party may file with the
5 superior court a petition for a writ of mandate for review of the
6 order.

7 (b) In every case, the court shall exercise its independent
8 judgment on the evidence.

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

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

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

16 13321. (a) (1) In the case of a review by the state board under
17 Section 13320 or review by the state board of a decision or order
18 issued under authority delegated to an officer or employee of the
19 state board where the state board by regulation has authorized a

1 petition for reconsideration, the state board, upon notice and
2 hearing, if a hearing is requested, may stay in whole or in part the
3 effect of the decision or order of a regional board or of the state
4 board. Except as provided in paragraph (2), the state board shall
5 issue or deny the stay within 90 days of receipt of a request for
6 stay that complies with the applicable regulations for requesting
7 a stay. The party requesting the stay may extend the 90-day period.

8 (2) (A) If the request for stay relates to ~~a water quality~~
9 ~~certification issued under Section 13160 authority delegated to an~~
10 ~~officer or employee of the state board for a discharge for a proposed~~
11 ~~activity associated with a hydroelectric facility and the proposed~~
12 ~~activity requires a license or an amendment to a license issued by~~
13 ~~the Federal Energy Regulatory Commission, either of the following,~~
14 the state board shall issue or deny the stay within 45 days of receipt
15 of a request for stay that complies with the applicable regulations
16 for requesting a stay. ~~The party requesting the stay may extend the~~
17 ~~45-day period.~~ *the stay:*

18 (i) *A water quality certification issued under Section 13160*
19 *authority delegated to an officer or employee of the state board*
20 *for a discharge for a proposed activity associated with a*
21 *hydroelectric facility and the proposed activity requires a license*
22 *or an amendment to a license issued by the Federal Energy*
23 *Regulatory Commission.*

24 (ii) *A cleanup and abatement order issued under Section 13304*
25 *authority delegated to an officer or employee of the state board*
26 *or a regional board that requires the provision of alternate water*
27 *supplies within 120 days of the date of the order.*

28 (B) *The party requesting a stay may extend the 45-day period*
29 *described in subparagraph (A).*

30 (3) If the state board fails to issue or deny the stay within the
31 applicable period specified in paragraph (1) or (2), the request for
32 stay shall be deemed denied on the first day following the
33 applicable period.

34 (b) (1) Within 30 days of any order of the state board issuing
35 or denying a stay or within 30 days of a stay being deemed denied
36 pursuant to paragraph (3) of subdivision (a), any aggrieved party
37 may file with the superior court a petition for writ of mandate for
38 review of the state board's order issuing or denying a stay or failure
39 to issue or deny a stay.

1 (2) (A) Except as otherwise provided in this section, Section
2 1094.5 of the Code of Civil Procedure shall govern proceedings
3 for which petitions are filed under this section.

4 (B) If the superior court finds that the state board failed to follow
5 the procedures specified in subdivision (a) or otherwise
6 prejudicially abused its discretion, the superior court may set aside
7 the state board's order issuing or denying the stay and may stay,
8 in whole or in part, the effect of the decision or order of a regional
9 board or of the state board pending review by the state board.

10 (C) Notwithstanding subparagraph (A) or (B), if a request for
11 stay is subject to paragraph (2) of subdivision (a), the superior
12 court may proceed without a certified administrative record and
13 may stay, in whole or in part, the effect of the order or decision
14 issued under delegated authority pending the state board's review
15 of the order or decision, however, no such stay shall be imposed
16 if the court is satisfied that it is against the public interest.

17 (3) In an action under this section or Section 13330 involving
18 a water quality certification issued pursuant to Section 13160, the
19 court shall not issue a stay or other order that enjoins or has the
20 effect of preventing the state board from taking action necessary
21 to avoid a waiver of water quality certification for failure to act
22 within the period provided under federal law. In determining
23 whether there is a risk of waiver, the court shall consider the
24 applicable regulations or policies of the federal agency issuing the
25 permit or license subject to the water quality certification.

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

29 (d) If a petition is filed with the superior court under Section
30 13330, any stay in effect at the time of the filing of the petition
31 shall remain in effect by operation of law for a period of 20 days
32 from the date of the filing of that petition.

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

34 13330. (a) Not later than 30 days from the date of service of
35 a copy of a decision or order issued by the state board under this
36 division, other than a decision or order issued pursuant to Article
37 7 (commencing with Section 13550) of Chapter 7, any aggrieved
38 party may file with the superior court a petition for writ of mandate
39 for review of the decision or order. An aggrieved party must file
40 a petition for reconsideration with the state board to exhaust that

1 party’s administrative remedies only if the initial decision or order
 2 is issued under authority delegated to an officer or employee of
 3 the state board and the state board by regulation has authorized a
 4 petition for reconsideration. The state board shall order or deny
 5 reconsideration on a petition therefor not later than 90 days from
 6 the date the state board adopts the decision or order.

7 (b) A party aggrieved by a final decision or order of a regional
 8 board subject to review under Section 13320 may obtain review
 9 of the decision or order of the regional board in the superior court
 10 by filing in the court a petition for writ of mandate not later than
 11 30 days from the date on which the state board denies review.

12 (c) The time for filing an action or proceeding subject to Section
 13 21167 of the Public Resources Code for a person who seeks review
 14 of the regional board’s decision or order under Section 13320, or
 15 who seeks reconsideration under a state board regulation
 16 authorizing a petition for reconsideration, shall commence upon
 17 the state board’s completion of that review or reconsideration.

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

22 (e) Except as provided in this section, Section 1094.5 of the
 23 Code of Civil Procedure shall govern proceedings for which
 24 petitions are filed pursuant to this section. For the purposes of
 25 subdivision (c) of Section 1094.5 of the Code of Civil Procedure,
 26 the court shall exercise its independent judgment on the evidence
 27 in any case involving the judicial review of a decision or order of
 28 the state board issued under Section 13320, or a decision or order
 29 of a regional board for which the state board denies review under
 30 Section 13320, other than a decision or order issued under Section
 31 13323.

32 (f) Except as provided in this section, no legal or equitable
 33 process shall issue in any proceeding in any court against the state
 34 board, a regional board, or any officer of the state board or a
 35 regional board to review, prevent, or enjoin any adjudicative
 36 proceeding under this division. Except as provided in this section
 37 and Section 13321, no legal or equitable process shall issue in any
 38 proceeding in any court against the state board, a regional board,
 39 or any officer or employee of the state board or a regional board
 40 to review, prevent, or enjoin a decision or order by the state board,

1 a regional board, or any officer or employee of the state board or
2 a regional board before a decision or order is issued and the
3 procedures for administrative review of that decision or order have
4 been exhausted.

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

10 (h) For purposes of this section, a decision or order includes a
11 final action in an adjudicative proceeding and an action subject to
12 Section 11352 of the Government Code, but does not include an
13 action subject to Section 11353 of the Government Code or the
14 adoption, amendment, or repeal of a regulation under Chapter 3.5
15 (commencing with Section 11340) of Part 1 of Division 3 of Title
16 2 of the Government Code.

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

18 13361. (a) Every civil action brought under the provisions of
19 this division at the request of a regional board or the state board
20 shall be brought by the Attorney General in the name of the people
21 of the State of California and any of those actions relating to the
22 same discharge may be joined or consolidated.

23 (b) Any civil action brought pursuant to this division shall be
24 brought in a county in which the discharge is made, or proposed
25 to be made. However, any action by or against a city, city and
26 county, county, or other public agency shall, upon motion of either
27 party, be transferred to a county or city and county not a party to
28 the action or to a county or city and county other than that in which
29 the city or public agency is located.

30 (c) In any civil action brought pursuant to this division in which
31 a regional board or the state board seeks a temporary restraining
32 order, preliminary injunction, or permanent injunction, it shall not
33 be necessary to allege or prove at any stage of the proceeding that
34 irreparable damage will occur should the temporary restraining
35 order, preliminary injunction, or permanent injunction not be
36 issued, or that the remedy at law is inadequate, and the temporary
37 restraining order, preliminary injunction, or permanent injunction
38 shall issue without those allegations and proof.

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