

## Assembly Bill No. 1707

### CHAPTER 722

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

[Approved by Governor September 28, 2014. Filed with Secretary of State September 28, 2014.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1707, 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, regulations.

This bill would require the state board to post on its Internet Web site a copy of the external scientific peer review conducted for proposed rules of the state board or a California regional water quality control board.

*The people of the State of California do enact as follows:*

SECTION 1. Section 57004 of the Health and Safety Code is amended to read:

57004. (a) For purposes of this section, the following terms have the following meanings:

(1) "Rule" means either of the following:

(A) A regulation, as defined in Section 11342.600 of the Government Code.

(B) A policy that is adopted by the State Water Resources Control Board pursuant to the Porter-Cologne Water Quality Control Act (Division 7

(commencing with Section 13000) of the Water Code) that has the effect of a regulation and that is adopted in order to implement or make effective a statute.

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

(b) The agency, or a board, department, or office within the agency, shall 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, any combination of those entities, or with a scientist or group of scientists of comparable stature and qualifications that is recommended by the President of the University of California, to conduct an external scientific peer review of the scientific basis for any rule proposed for adoption by any board, department, or office within the agency. The scientific basis or scientific portion of a rule adopted pursuant to Chapter 6.6 (commencing with Section 25249.5) of Division 20 or Chapter 3.5 (commencing with Section 39650) of Part 2 of Division 26 shall be deemed to have complied with this section if it complies with the peer review processes established pursuant to these statutes.

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

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

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

(2) The external scientific peer review entity, within the timeframe agreed upon by the board, department, or office and the external scientific peer review entity, prepares a written report that contains an evaluation of the scientific basis of the proposed rule. If the external scientific peer review entity finds that the board, department, or office has failed to demonstrate that the scientific portion of the proposed rule is based upon sound scientific knowledge, methods, and practices, the report shall state that finding, and the reasons explaining the finding, within the agreed-upon timeframe. The board, department, or office may accept the finding of the external scientific peer review entity, in whole, or in part, and may revise the scientific portions of the proposed rule accordingly. If the board, department, or office disagrees with any aspect of the finding of the external scientific peer review entity, it shall explain, and include as part of the rulemaking record, its basis for arriving at such a determination in the adoption of the final rule, including

the reasons why it has determined that the scientific portions of the proposed rule are based on sound scientific knowledge, methods, and practices.

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

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

(g) For any rule proposed by the State Water Resources Control Board or a California regional water quality control board, the state board shall post a copy of the external scientific peer review conducted pursuant to subdivision (b) on its Internet Web site.