



- Board of Directors
Legislation Committee

6/14/2011 Board Meeting

8-8

Subject

Express support for Senate Bill 900 (Steinberg, D-Sacramento) -- California regional water quality control boards: members

Description

Under existing law, the State Water Resources Control Board and the nine California regional water quality control boards prescribe waste discharge requirements in accordance with the federal national pollutant discharge elimination system (NPDES) permit program established by the federal Clean Water Act (33 U.S.C. Section 1251, et seq.) and the state Porter-Cologne Water Quality Control Act (Water Code Section 13000, et seq.). In implementing California compliance with the federal law, the Porter-Cologne Act currently prohibits a person from being a member of the California state board or a state regional board if that person receives or has received during the previous two years a significant portion of his or her income directly or indirectly from any person subject to the waste discharge requirements or applicants for water discharge requirements imposed pursuant to the federal permit system. The federal government has established a rule that a significant portion of income amounts to 10 percent or more of that person's income.

SB 900 ([Attachment 1](#)) would provide that a person would not be disqualified from being a member of a regional board because that person receives or has received during the previous two years a significant portion of his or her income directly or indirectly from any person subject to waste discharge requirements not within the jurisdiction of that regional board. This new rule could only be implemented if the United States Environmental Protection Agency (EPA) either determines that EPA program approval is not necessary for this change in eligibility for regional board membership or approves this change in the California law.

The simple modification proposed in this measure would restore the full participation of qualified individuals appointed to regional boards and provide for a broader pool of qualified applicants eligible for state and regional water boards. Staff recommends that Metropolitan support this bill because it would significantly help in the recruitment of qualified people to serve on California regional boards. In particular, enforcement of this stringent eligibility rule has resulted in the exclusion of many qualified individuals from serving on these regional boards. Urban and agriculture interests are substantially impacted by the pollutant waste discharge requirements, and their inability to serve on the regional boards has led to a growing insulation of water regulators from these important regulated communities. This bill is sponsored by the Western Growers Association and is supported by numerous agricultural organizations, as well as the California Chamber of Commerce, the California Manufacturers and Technology Association, the California Business Properties Association and the Northern California Water Association. Those opposing the bill, include the Sierra Club California, Heal the Bay, and the California Sportfishing Protection Alliance.

Policy

None

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and authorize the General Manager to express Metropolitan’s support for SB 900.

Fiscal Impact: None

Business Analysis: Impacts membership on Regional Water Quality Control Boards.

Option #2

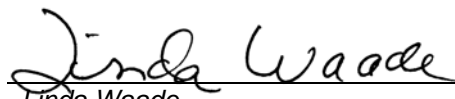
Take no position on SB 900.

Fiscal Impact: None

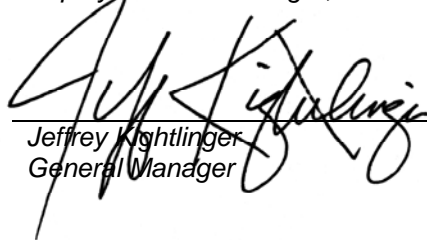
Business Analysis: Impacts membership on Regional Water Quality Control Boards.

Staff Recommendation

Option #1


Linda Waade
Deputy General Manager, External Affairs

6/2/2011
Date


Jeffrey Nightlinger
General Manager

6/2/2011
Date

Attachment 1 – Senate Bill 900

AMENDED IN SENATE MAY 9, 2011

AMENDED IN SENATE APRIL 6, 2011

SENATE BILL

No. 900

Introduced by Senator Steinberg

February 18, 2011

~~An act to amend Sections 175.5 and 13207 of, and to add Section 13388.1 to, the Water Code, relating to water. An act to add Section 13388.1 to the Water Code, relating to water.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 900, as amended, Steinberg. California regional water quality control boards: ~~members; proceedings;~~ *members.*

Under existing law, the State Water Resources Control Board and the 9 California regional water quality control boards 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 prescribes requirements and qualifications for the membership of the state board and the regional boards, and prohibits a member of the state board or a regional board from participating in specified board actions that involve the member or any waste discharger with which the member is connected as a director, officer, or employee, or in which the board member has a financial interest within the meaning of the Political Reform Act of 1974.~~

~~This bill would delete the provisions prohibiting a board member from participating in actions that involve the member or a waste discharger with which the member is connected. The bill would specify that the limitation on a board member's financial interest applies only~~

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to a disqualifying financial interest within the meaning of the Political Reform Act of 1974.

The state act *prescribes requirements and qualifications for the membership of the state board and the regional boards, and* prohibits a person from being a member of the state board or a regional board if that person receives or has received during the previous 2 years a significant portion of his or her income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements that are prescribed pursuant to the NPDES permit program.

This bill, with regard to a regional board, would provide that a person would not be disqualified from being a member of that board because that person receives, or has received during the previous 2 years, a significant portion of his or her income directly or indirectly from a person subject to waste discharge requirements, or an applicant for waste discharge requirements, that govern discharges not within the jurisdiction of that regional board. The bill would provide that this revised eligibility provision relating to members of a regional board shall be implemented only if certain requirements are met.

Vote: majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: no.

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

- 1 ~~SECTION 1. Section 175.5 of the Water Code is amended to~~
- 2 ~~read:~~
- 3 ~~175.5. (a) A member of the board shall not participate in any~~
- 4 ~~board action pursuant to Article 2 (commencing with Section~~
- 5 ~~13320) of Chapter 5 of Division 7 in which the board member has~~
- 6 ~~a disqualifying financial interest in the decision within the meaning~~
- 7 ~~of Section 87103 of the Government Code.~~
- 8 ~~(b) A board member shall not participate in any proceeding~~
- 9 ~~before any regional board as a consultant or in any other capacity~~
- 10 ~~on behalf of any waste discharger.~~
- 11 ~~(c) Upon the request of any person, or on the Attorney General's~~
- 12 ~~own initiative, the Attorney General may file a complaint in the~~
- 13 ~~superior court for the county in which the board has its principal~~
- 14 ~~office alleging that a board member has knowingly violated this~~
- 15 ~~section and the facts upon which the allegation is based and asking~~
- 16 ~~that the member be removed from office. Further proceedings shall~~

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1 ~~be in accordance as near as may be with rules governing civil~~
2 ~~actions. If after trial the court finds that the board member has~~
3 ~~knowingly violated this section it shall pronounce judgment that~~
4 ~~the member be removed from office.~~

5 ~~SEC. 2. Section 13207 of the Water Code is amended to read:~~

6 ~~13207. (a) A member of a regional board shall not participate~~
7 ~~in any board action pursuant to Article 4 (commencing with Section~~
8 ~~13260) of Chapter 4, or Article 1 (commencing with Section~~
9 ~~13300) of Chapter 5, of this division in which he or she has a~~
10 ~~disqualifying financial interest in the decision within the meaning~~
11 ~~of Section 87103 of the Government Code.~~

12 ~~(b) A board member shall not participate in any proceeding~~
13 ~~before any regional board or the state board as a consultant or in~~
14 ~~any other capacity on behalf of any waste discharger.~~

15 ~~(c) Upon the request of any person, or on the Attorney General's~~
16 ~~own initiative, the Attorney General may file a complaint in the~~
17 ~~superior court for the county in which the regional board has its~~
18 ~~principal office alleging that a board member has knowingly~~
19 ~~violated this section and the facts upon which the allegation is~~
20 ~~based and asking that the member be removed from office. Further~~
21 ~~proceedings shall be in accordance as near as may be with rules~~
22 ~~governing civil actions. If after trial the court finds that the board~~
23 ~~member has knowingly violated this section it shall pronounce~~
24 ~~judgment that the member be removed from office.~~

25 ~~SEC. 3.~~

26 ~~SECTION 1. Section 13388.1 is added to the Water Code, to~~
27 ~~read:~~

28 ~~13388.1. (a) Notwithstanding Section 13388, a person shall~~
29 ~~not be disqualified from being a member of a regional board~~
30 ~~because that person receives, or has received during the previous~~
31 ~~two years, a significant portion of his or her income directly or~~
32 ~~indirectly from a person subject to waste discharge requirements,~~
33 ~~or an applicant for waste discharge requirements, that govern~~
34 ~~discharges pursuant to this chapter not within the jurisdiction of~~
35 ~~that regional board.~~

36 ~~(b) This section shall be implemented only if the United States~~
37 ~~Environmental Protection Agency either determines that no~~
38 ~~program approval is necessary, or approves of a change in~~
39 ~~California's national pollutant discharge elimination system~~
40 ~~program, to allow the state to administer the national pollutant~~

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- 1 discharge elimination system permit program consistent with
- 2 subdivision (a).

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