AMENDED IN SENATE APRIL 21, 2003

SENATE BILL No. 568

Introduced by Senator Sher

February 20, 2003

An act to amend Sections 25141.2 and 57004 of the Health and Safety Code, relating to environmental protection.

LEGISLATIVE COUNSEL'S DIGEST

SB 568, as amended, Sher. Environmental protection: external scientific peer reviewers.

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 institution of higher learning, or 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 by any board, department, or office within the agency, and prescribes procedures for conducting that scientific peer review, as specified.

This bill would prohibit any person with ~~an existing or prior material or~~ *a* financial interest ~~in the policy or program affected or potentially affected by~~ *, as described, that is related to the subject matter of* the review from serving as an external scientific peer reviewer*,* and *would* make a conforming change.

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

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

SECTION 1. Section 25141.2 of the Health and Safety Code is amended to read:

25141.2. (a) Except as provided in paragraph (2), the department may not publish a notice of a proposal to adopt, amend, or repeal regulations pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) pertaining to the criteria and guidelines for the identification of hazardous waste or to management standards for special wastes until the findings of the external scientific peer review entity convened pursuant to Section 57004 have been issued and the department has reviewed those findings.

(b) With respect to the regulations specified in subdivision (a), the department shall submit for public comment its analysis of any hazardous waste management activity to be exempted from this chapter pursuant to subdivision (b) of Section 25150.6 and its demonstration that the exemption satisfies the requirements of subdivision (c) of Section 25150.6 on the earlier of the following dates:

(1) The date that the department issues its draft environmental impact report on the proposed regulations.

(2) The date the department publishes its notice of proposed regulatory action pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) Subdivision (b) does not prohibit the department from revising its analysis or demonstration to respond to public comments before the adoption of the regulations.

(d) The department shall, prior to adopting the final version of any regulations specifying the criteria and guidelines for the identification of hazardous waste pursuant to Section 25141 and submitting the adopted regulations to the Office of Administrative Law, do all of the following:

(1) Determine which aspects of the final version of the regulations have been changed subsequent to an external scientific peer review of the scientific basis and scientific portions of the regulations as initially proposed and identify the scientific basis

and empirical data or other scientific findings, conclusions, and assumptions upon which the changes are premised.

(2) Submit each change identified pursuant to paragraph (1), together with all supporting scientific material, to external scientific peer review pursuant to paragraph (1) of subdivision (e) of Section 57004 if both of the following apply:

(A) The change is related to establishing a regulatory level, standard, or other requirement for the protection of public health, safety, or the environment.

(B) The change is not directly related to, and is not a response to, the findings of the external scientific peer review of the regulations as initially proposed.

(3) Comply with the requirements of paragraph (2) of subdivision (e) of Section 57004.

(e) (1) The department may utilize the CalTox model and the criteria and guidelines for the identification of hazardous waste, if the criteria and guidelines have been adopted pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), to generate new values for soluble constituents.

(2) Notwithstanding paragraph (1), the department may not amend or repeal the regulations adopted pursuant to this chapter that are in effect on August 21, 1998, with respect to the testing procedure employed to measure solubility or with respect to the regulatory thresholds measured by that testing procedure until an external scientific peer review entity convened pursuant to Section 57004 makes the following ~~finding~~ *findings*:

(A) The new proposed testing procedure for solubility is based on sound scientific knowledge, methods, and practices and will predict, with a reasonable degree of accuracy, the long-term mobility in landfill leachate of each hazardous constituent for which the department has established by regulation a soluble threshold limit concentration.

(B) For those hazardous constituents whose long-term mobility in landfill leachate cannot be accurately measured by any testing procedure that can be developed within a reasonable period of time, the soluble threshold limit concentration can be adjusted in a scientifically sound manner to compensate for the extent of inaccuracy of the testing procedure for that constituent.

(3) In establishing revised total threshold limit concentrations in any proposed regulations pertaining to the criteria and guidelines for the identification of hazardous waste pursuant to Section 25141, the department may not base the total threshold limit concentration for any hazardous constituent in whole, or in part, on an assumption that when wastes are placed on or in the land outside of a permitted disposal facility, those wastes will be mixed or diluted, unless an external scientific peer review entity convened pursuant to Section 57004 finds that the department has demonstrated, in a sound scientific manner, that the assumption that dilution or mixing will occur when the wastes are applied or disposed to land is a reasonable representation of waste management practices in the state, while taking into account reasonably foreseeable mismanagement of wastes, and that these application or disposal practices do not pose significant public health or environmental risks.

SEC. 2. 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 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 person may serve as an external scientific peer reviewer ~~for the scientific portion of a rule if that person has an existing or prior material or financial interest in the policy or program affected or potentially affected by the review.~~ *for the scientific portion of a rule if that person has a financial interest, as described in Section 87103 of the Government Code, that is related to the subject matter of the review.*

(e) No board, department, or office within the agency may 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.

(f) 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.

(g) 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.

O