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HEALTH AND SAFETY CODE - HSC

DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS [24000 - 27007] (*Division 20 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 6.5. Hazardous Waste Control [25100 - 25259] (*Chapter 6.5 added by Stats. 1972, Ch. 1236.*)

ARTICLE 2.1. Board of Environmental Safety [25125 - 25125.9] (*Article 2.1 added by Stats. 2021, Ch. 73, Sec. 5.*)

25125. (a) The Board of Environmental Safety is hereby established in the department consisting of five voting members as follows:

- (1) Three members shall be appointed by the Governor subject to confirmation by the Senate.
- (2) One member shall be appointed by the Senate Committee on Rules.
- (3) One member shall be appointed by the Speaker of the Assembly.

(b) The members of the board shall be appointed on the basis of their demonstrated interest in the fields of hazardous waste management, site remediation, or pollution prevention and reduction, shall possess understanding of the needs of the general public in connection with the risks posed by hazardous materials and the management of hazardous waste, and shall possess experience in at least one of the following:

- (1) Environmental law.
- (2) Environmental science, including toxicology, chemistry, geology, industrial hygiene, or engineering.
- (3) Public health.
- (4) Cumulative impact assessment and management.
- (5) Regulatory permitting.

(c) No more than two members of the board may represent a single category of qualification described in paragraphs (1) to (5), inclusive, of subdivision (b) at any one time.

(d) The board members shall represent the general public interest and act to protect public health and reduce risks of toxic exposure with a particular focus on disproportionately burdened and vulnerable communities.

(e) (1) Three board members constitute a quorum for the transaction of business of the board.

(2) An affirmative vote of a majority of board members present at a meeting of the board shall be required for the board to take any action or pass any motion.

(f) (1) Except as provided in paragraph (2), a board member shall be appointed for a term of four years. A vacancy in the board shall be immediately filled by the appointing authority for the unexpired portion of the term in which the vacancy occurs.

(2) The terms of the board members shall be staggered. One of the initial members appointed by the Governor and the initial member appointed by the Speaker of the Assembly shall serve a two-year term and the remaining three initial members shall serve a four-year term. The chairperson of the board, appointed by the Governor pursuant to subdivision (m), shall serve a four-year term. The Governor shall determine which of the initial members appointed by the Governor shall serve a two-year term and which shall serve a four-year term.

(g) (1) A board member appointed by the Governor may be removed by the Governor for neglect of duty, misconduct, or malfeasance in office. Before removal from office, a member shall be provided with a written statement of the charges and an

opportunity to be heard.

(2) A board member appointed by the Governor or the Legislature may be removed after trial for knowingly violating this section based on a complaint filed in a county superior court by the Attorney General alleging that the board member knowingly violated this section and asking that the board member be removed from the board. Further proceedings shall be in accordance as near as may be with rules governing civil actions.

(3) A board member shall not miss three consecutive meetings as unexcused absences. Missing three consecutive meetings as unexcused absences shall constitute grounds for removal under paragraph (1) or (2).

(h) A board member shall not make, participate in making, or in any way attempt to use the board member's official position to influence a board decision in which the board member knows or has reason to know they have a financial interest within the meaning of Section 87103 of the Government Code.

(i) The board shall conduct its business, including adjourning to, or meeting solely in, closed session, pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(j) (1) The board shall adopt rules for the conduct of its affairs.

(2) The rules for conduct adopted by the board shall require, at a minimum, that a board member adhere to all of the following principles:

(A) A board member shall faithfully discharge the duties, responsibilities, and quasi-judicial actions of the board.

(B) A board member shall conduct their affairs in the public's best interest, following principles of fundamental fairness and due process of law.

(C) A board member shall conduct their affairs in an open, objective, and impartial manner, free of undue influence and the abuse of power and authority.

(D) A board member shall understand that the programs implemented by the department require public awareness, understanding, and support of, and participation and confidence in, the board and its practices and procedures.

(E) A board member shall preserve the public's welfare and the integrity of the board, and act to maintain the public's trust in the board and the implementation of its regulations and policies.

(F) A board member shall not conduct themselves in a manner that reflects discredit upon state laws, policies, or regulations, or principles of the board.

(3) The rules adopted pursuant to this subdivision are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(k) The board shall conduct administrative adjudications, including, but not limited to, permit appeals pursuant to paragraph (2) of subdivision (b) of Section 25125.2, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), including the prohibition against ex parte communications.

(l) (1) The Attorney General shall represent the board in litigation concerning the affairs of the board unless the Attorney General represents another state agency that is a party to the action, in which case, the Attorney General may represent the board with the written consent of the board and the other state agency.

(2) If the Attorney General is not representing the board, the board may contract for the service of outside counsel to represent the board or in-house counsel of the board may represent the board, subject to Section 11040 of the Government Code.

(m) The chairperson of the board, who is appointed by the Governor, shall serve full time and shall receive the salary provided for in Section 11553 of the Government Code. All other members of the board shall serve half time and shall receive one-half of the salary provided for in Section 11553.5 of the Government Code.

(n) (1) Members of the board, or representatives authorized by the board to do so, may hold, attend, or otherwise participate in conferences or hearings, official or unofficial, within or out of the state, with interested persons, agencies, or officers, of this or any other state, or with Congress, congressional committees, or officers of the federal government, concerning any matter within the scope of the power and duties of the board.

(2) This subdivision does not create an exception to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(o) Due to the unique nature of permitting federal facilities, the chairperson of the board shall designate one board member to serve as the liaison between the board and the United States Department of Defense.

25125.2. (a) Beginning January 1, 2022, the board shall conduct no fewer than six public meetings per year, at least three of which shall be held outside the greater Sacramento area. For those meetings held outside the greater Sacramento area, the board shall meet in different geographic areas within the state to facilitate the participation by the businesses and sites regulated by the department, as well as members of the communities impacted by the businesses and sites regulated by the department.

(b) The board shall do all of the following:

(1) Set fees pursuant to Sections 25205.2.1, 25205.5.01, and 25205.6.1.

(2) Hear and decide appeals of hazardous waste facility permit decisions.

(3) Provide opportunities for public hearings on individual permitted or remediation sites.

(4) Review and consider for approval the director's annual priorities for each program under the department and, after consulting with the director, adopt clear performance metrics for the department and each of the department's programs. The board's responsibilities under this paragraph shall be conducted at a public hearing. The director shall provide annual updates on progress toward meeting the priorities and performance metrics.

(5) Conduct an analysis of the fee structure supporting the department's activities funded by the Hazardous Waste Control Account, the Hazardous Waste Facilities Account, and the Toxic Substances Control Account and, to the extent necessary, develop recommendations for funding the department's activities that accomplish all of the following:

(A) Provides for protection for public health and safety and the environment.

(B) Provides adequate funding to ensure the timely remediation of contaminated sites, including the remediation of orphan sites.

(C) Provides adequate funding for the enforcement of this chapter and Part 2 (commencing with Section 78000) of Division 45.

(D) Provides adequate funding for the programs and regulatory efforts that protect consumers from potentially harmful chemicals in products or workplaces.

(E) Provides for a reasonable distribution of costs among the businesses that contribute to the need for management of hazardous waste in the state.

(F) Provides a level of funding that will enable the department and the board to implement and carry out their duties and responsibilities, including the department's performance metrics approved by the board pursuant to this section.

(G) Considers increasing fee rates, decreasing fee rates, consolidating fees, eliminating fees, or creating new fees, as appropriate, as well as the option to identify any other funding sources that may be appropriate for use by the department in performing its duties and responsibilities. The board may consider where tiered rates may be appropriate to align the department's regulatory costs with different volumes or types of hazardous waste.

(H) Considers the creation of graduated fee rates that could be used to encourage or discourage waste generation or specific higher risk or hazard waste management activities.

(I) Considers additional funding amounts that may be needed for the department to implement the responsibilities identified in Article 11.8 (commencing with Section 25244) and Article 11.9 (commencing with Section 25244.12), in whole or in part.

(J) Considers additional funding amounts that may be needed for the department to implement programs that further support the collection and appropriate management of hazardous wastes that may pose a higher risk of being illegally disposed.

(6) Conduct an analysis of the department's programs, the relationship between those programs and related programs in other regulatory agencies, including, but not limited to, the State Water Resources Control Board, the California regional water quality control boards, and the Department of Resources Recycling and Recovery, and, to the extent necessary, develop recommendations to improve coordination between programs, and to reduce or eliminate duplication or overlap.

(7) Develop, in consultation with the director and with consideration of available resources, a multiyear schedule for the discussion of long-term goals for the following departmental activities:

(A) The department's processing of hazardous waste facility permits and proposals to improve the efficiency of the permitting process, the relationship between the efficiency of the process and the time needed to review permit applications and reach permit decisions, and the amount of reimbursement required of permit applicants in the course of the permitting process.

(B) The department's duties and responsibilities in law and proposals to improve the department's ability to meet those duties and responsibilities.

(C) The site mitigation program and proposals for the prioritization of the cleanup of contaminated properties.

(D) The department's implementation of its enforcement activities.

(Amended by Stats. 2022, Ch. 258, Sec. 36. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)

25125.3. The board may form advisory subcommittees of its membership to work on any topic within the board's jurisdiction, including, but not limited to, environmental justice and fee structure. Subcommittees formed pursuant to this section are authorized to do both of the following:

(a) Seek information and feedback from any stakeholder or constituencies subject to the authorities implemented by the department or impacted by the department's implementation of its authorities.

(b) Present recommendations of the subcommittee to the full board for its consideration and action. The full board is not required to act on any recommendation presented by a subcommittee of the board.

(Added by Stats. 2021, Ch. 73, Sec. 5. (SB 158) Effective July 12, 2021.)

25125.4. (a) The board shall have the authority to adopt, amend, or repeal, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), regulations as may be necessary to enable it to carry into effect this article, including the authority to adopt regulations establishing fees as required pursuant to paragraph (1) of subdivision (b) of Section 25125.2.

(b) Except as provided in subdivision (j) of Section 25125, a regulation adopted pursuant to this article may be adopted as an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, an emergency regulation adopted by the board pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law, and shall remain in effect until repealed by the board.

(Added by Stats. 2021, Ch. 73, Sec. 5. (SB 158) Effective July 12, 2021.)

25125.6. The director, or a designee, shall present and respond to the board, if requested by the board, on any issue or item brought forward by a member of the public, the ombudsperson, or a board member.

(Added by Stats. 2021, Ch. 73, Sec. 5. (SB 158) Effective July 12, 2021.)

25125.7. The board shall annually prepare and transmit to the Secretary for Environmental Protection an annual review of the department's performance as compared to its objectives, including, but not limited to, the performance of the director.

(Added by Stats. 2021, Ch. 73, Sec. 5. (SB 158) Effective July 12, 2021.)

25125.8. (a) There is established within the board an office of the ombudsperson. The board shall appoint an ombudsperson who shall serve full time at the pleasure of the board.

(b) The office of the ombudsperson shall serve as an impartial resource to the public, including stakeholders, by doing the following:

(1) Receive complaints and suggestions from the public.

(2) Evaluate complaints.

(3) Report findings and make recommendations to the director and the board.

(4) Render assistance to the public, when appropriate.

(c) The board, in consultation with the director, may determine the activities, in addition to those specified in subdivision (b), the ombudsperson can undertake.

(d) The board shall establish procedures governing the exercise of the ombudsperson's duties, including all of the following:

- (1) Methods to encourage the submission of complaints or suggestions and safeguards to ensure confidentiality.
- (2) Forms to submit complaints and suggestions to the ombudsperson.
- (3) Criteria for prioritization of complaints and suggestions submitted to the ombudsperson.
- (4) Access to information and resources to improve understanding of the department's activities and opportunities for involvement in the department's regulatory processes.

(e) Any person may submit a complaint or make a suggestion to the ombudsperson regarding any action, program, or policy of the department.

(Added by Stats. 2021, Ch. 73, Sec. 5. (SB 158) Effective July 12, 2021.)

25125.9. The director and the chairperson of the board shall, when requested, but no less than annually, appear before the appropriate policy committees in the Assembly and Senate to provide an update on the department's performance as compared to its objectives, including, but not limited to, metrics established pursuant to paragraph (4) of subdivision (b) of Section 25125.2, the department's progress in implementing any reform measures, and any other information the committees request.

(Added by Stats. 2021, Ch. 73, Sec. 5. (SB 158) Effective July 12, 2021.)