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AB-2108 Water policy: environmental justice: disadvantaged and tribal communities. (2021-2022)

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Assembly Bill No. 2108

CHAPTER 347

An act to add Sections 189.7 and 13149.2 to the Water Code, relating to water.

[Approved by Governor September 16, 2022. Filed with Secretary of State September 16, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2108, Robert Rivas. Water policy: environmental justice: disadvantaged and tribal communities.

Existing law requires the State Water Resources Control Board to formulate and adopt state policy for water quality control. Existing law requires the regional boards to prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. Existing law also authorizes the state board or a regional board to waive these requirements as to a specific discharge or type of discharge if the state board or a regional board determines, after any necessary state board or regional board meeting, that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest.

This bill would, among other things, specify that the state board and each regional board need to begin outreach to identify issues of environmental justice as early as possible in planning, policy, and permitting processes. The bill would require the state board and each regional board to engage in equitable, culturally relevant community outreach to promote meaningful civic engagement from potentially impacted communities of proposed discharges of waste that may have disproportionate impacts on water quality in disadvantaged communities or tribal communities and ensure that outreach and engagement shall continue throughout the waste discharge planning, policy, and permitting processes. The bill would require the state board and each regional board, contingent upon an appropriation, to hire environmental justice and tribal community coordinator positions for specified purposes. The bill would require the state board, contingent upon a specific appropriation, to establish a community capacity-building stipend program to promote meaningful civic engagement by disadvantaged communities and tribal communities in the state board and regional board decisionmaking processes, among other activities. The bill would require the state board and each regional board to make a finding, as specified, on potential environmental justice, tribal impact, and racial equity considerations when adopting water quality control plans or state policies for water quality control, and when issuing or reissuing waste discharge requirements or waivers of waste discharge requirements. The bill would also set forth related findings and declarations.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Disadvantaged communities are disproportionately impacted by water quality pollution. The state's 2021 CalEnviroScreen update reveals that the top 10 percent of least polluted neighborhoods are 67 percent White, and the top 10 percent of most polluted neighborhoods are 90 percent Black, Indigenous, and people of color. Contaminated drinking water sources disproportionately burden low-income and Black, Indigenous, and people of color communities throughout California, further exacerbating persistent inequities, which can be seen in data collected by the human right to water framework.

(b) The 2021 Pollution and Prejudice story map from the California Environmental Protection Agency (CalEPA) demonstrates that historically redlined neighborhoods are generally associated with worse environmental conditions and greater population vulnerability to the effects of pollution today. People of color are overrepresented in the neighborhoods that are the most environmentally degraded and are still experiencing severe racial wealth gaps caused by redlining and other land-use practices designed to oppress them. Many of these communities lack access to parks, open spaces, greenways, and green infrastructure to provide, for example, natural flood protection, water treatment, and groundwater recharge and replenishment.

(c) In 2021, the State Water Resources Control Board released the 2021 Drinking Water Needs Assessment, which identifies approximately 345 water systems that fail to meet the goals of the human right to water. In addition, the needs assessment identified 617 at-risk public water systems, 611 at-risk state small water systems, and 80,000 at-risk domestic wells. It also identified 13 federally regulated tribal water systems that failed to meet the goals of the human right to water and 22 at-risk tribal water systems.

(d) Historically, the boards' programs were established over a structural framework that perpetuated inequities based on race. These inequities persist and the boards need to specifically address the role racism has played in creating inequities in affordability and access to clean and safe water and in the allocation and protection of water resources.

(e) In California, race predicts a person's access to government services and the quality and affordability of the services they receive. This includes the availability of safe drinking water and the collection, treatment, and reuse of wastewater. In fact, race is the strongest predictor of water and sanitation access.

(f) On a community scale, race is strongly correlated with more severe pollution burdens. However, until recently, few of the water boards' policies, programs, or plans expressly considered or addressed racial inequities. As a government agency, the State Water Resources Control Board recognizes the need to acknowledge racial inequity and to take action to address racial inequity within the agency and as part of the programs the regional water quality control boards carry out for the communities served.

(g) Over the last decade, the regional water quality control boards have increasingly emphasized actions to address environmental injustices, including: (1) creating the Safe and Affordable Funding for Equity and Resilience (SAFER) Program, a comprehensive approach to implementing the state's commitment to the human right to water by ensuring the estimated 1,000,000 Californians being served contaminated water have solutions for safe, affordable drinking water; (2) improving engagement with California Native American tribes and recognizing and protecting tribal beneficial uses; (3) developing a comprehensive response to climate change, including addressing disproportionate impacts on vulnerable communities; and (4) administering funding for projects that remediate the harm—or threat of harm—to human health, safety, and the environment caused by existing or threatened surface water and groundwater contamination.

(h) The regional water quality control boards recognize the need to further address environmental injustice and racial inequity. To better represent and serve California's communities, the regional water quality control boards need to address the connection between protecting and managing water resources and systemic and institutional racism while fostering greater workforce diversity, equity, and inclusion within the agency.

(i) The state is committed to the protection of public health and beneficial uses of waterbodies in all communities, particularly in Black, Indigenous, and people of color communities disproportionately burdened by environmental pollution through cleanup of contaminated soil, soil vapor, and groundwater; control of wastes discharged to land and surface water; restoration of impaired surface waters and degraded aquifers; and promotion of multibenefit water quality projects to increase access to parks, open spaces, greenways, and other green infrastructure.

SEC. 2. Section 189.7 is added to the Water Code, to read:

189.7. (a) Outreach to identify issues of environmental justice needs to begin as early as possible in state board or regional board planning, policy, and permitting processes. The state board and each regional board shall do both of the following:

(1) Engage in equitable, culturally relevant community outreach to promote meaningful civil engagement from potentially impacted communities of proposed discharges of waste that may have disproportionate impacts on water quality in disadvantaged communities or tribal communities and ensure that outreach and engagement shall continue throughout the waste discharge planning, policy, and permitting processes.

(2) Contingent upon an appropriation by the Legislature in the annual Budget Act for this purpose, hire environmental justice and tribal community coordinator positions solely dedicated to the purpose of achieving, at a minimum, all of the following goals:

(A) Adhering to environmental justice goals, policies, and objectives.

(B) Promoting meaningful civic engagement in the public decisionmaking process.

(C) Informing water quality control plans and state policies for water quality control, and amendments thereto, and statewide, regional, and individual waste discharge requirements or waivers of waste discharge requirements that address water quality impacts that occur disproportionately in disadvantaged communities pursuant to Section 13149.2.

(D) Soliciting community recommendations for future projects to be listed on regional board supplemental environmental project lists.

(b) Contingent upon a specific appropriation by the Legislature in the annual Budget Act or other statute for these purposes, the state board shall do all of the following:

(1) Direct resources for training of state board and regional board staff to advance adherence to environmental justice objectives, goals, and policies adopted by the state board and the regional boards.

(2) Establish a community capacity-building stipend program to promote meaningful civic engagement by disadvantaged communities and tribal communities in the state board and regional board decisionmaking processes by providing funding or services that allow members of the public to overcome barriers, such as technology, language, travel, and income, to public participation.

(3) Develop program-specific tools to better identify and prioritize state board and regional board compliance assessment and enforcement actions in disadvantaged communities.

(c) The state board may, through contracts or grants, utilize nonprofit organizations organized for the purpose of addressing environmental justice issues in disadvantaged communities or that work closely with tribal communities to administer all or part of the activities specified in paragraph (1) of subdivision (a) and paragraph (2) of subdivision (b).

(d) For purposes of this section, the following definitions apply:

(1) "Disadvantaged community" means a community in which the median household income is less than 80 percent of the statewide annual median household income level.

(2) "Environmental justice" has the same meaning as defined in Section 30107.3 of the Public Resources Code.

(3) "Meaningful civic engagement" includes, but is not limited to, all of the following:

(A) Providing opportunities for people to participate in decisionmaking processes about activities that may affect their environment or health and to contribute to the state board's and regional boards' decisionmaking.

(B) Seeking out and facilitating the involvement of people potentially affected by the decisions and taking into account community concerns.

(C) Informing disadvantaged and tribal community members of opportunities to be appointed to advisory or decisionmaking bodies, thereby empowering those community members to become advisors or decisionmakers.

(4) "Tribal community" means a community within a federally recognized California Native American tribe or nonfederally recognized Native American tribe on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004.

SEC. 3. Section 13149.2 is added to the Water Code, to read:

13149.2. (a) It is the intent of the Legislature in enacting this section to facilitate the development of analyses and findings that apply environmental justice objectives, goals, and policies adopted by the state board and the regional boards in a transparent and inclusive manner.

(b) When adopting water quality control plans or state policies for water quality control, including amendments to those plans and policies that incorporate an implementation program allowing time to comply with water quality objectives, the state board or a regional board shall make a concise, programmatic finding on potential environmental justice, tribal impact, and racial equity considerations related to the adoption. The finding shall be based on readily available information identified by staff or raised during the public review process and shall include both of the following:

(1) A concise summary of the anticipated water quality impact in disadvantaged or tribal communities as a result of the permitted activity or facility, and any environmental justice concerns within the scope of the state board or regional board's authority previously raised to the applicable board by interested persons with regard to these impacts.

(2) Identification of measures available and within the scope of the state board or regional board's authority to address the impacts of the permitted activity or facility in a disadvantaged or tribal community.

(c) When issuing or reissuing regional or statewide waste discharge requirements or waivers of waste discharge requirements, the state board or a regional board shall make a concise, programmatic finding on potential environmental justice, tribal impact, and racial equity considerations related to the issuance. For reissuances, the finding may be limited to considerations related to any changes to the requirements of the prior waste discharge requirements or waivers of waste discharge requirements. The finding shall be based on readily available information identified by staff or raised during the public review process and include the information specified in paragraphs (1) and (2) of subdivision (b).

(d) When issuing or reissuing individual waste discharge requirements or waivers of waste discharge requirements that regulate activity or a facility that may impact a disadvantaged or tribal community, and that includes a time schedule in accordance with subdivision (c) of Section 13263 for achieving an applicable water quality objective, an alternative compliance path that allows time to come into compliance with water quality objectives, or a water quality variance, the state board or a regional board shall make a finding on potential environmental justice, tribal impact, and racial equity considerations. For reissuances, the finding may be limited to considerations related to any changes to the requirements of the prior waste discharge requirements or waivers of waste discharge requirements. The finding shall be based on readily available information identified by staff or raised during the public review process and include the information specified in paragraphs (1) and (2) of subdivision (b). This subdivision does not apply to the use of mixing zones or dilution credits.

(e) This section does not apply to certifications issued pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Sec. 1341) or enrollments of dischargers under general waste discharge requirements or general waivers of waste discharge requirements.

(f) For purposes of this section, the following definitions apply:

(1) "Disadvantaged community" means a community in which the median household income is less than 80 percent of the statewide annual median household income level.

(2) "Environmental justice" has the same meaning as defined in Section 30107.3 of the Public Resources Code.

(3) "Tribal community" means a community within a federally recognized California Native American tribe or nonfederally recognized Native American tribe on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004.