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SB-756 Water: inspection: administrative procedure: notice: service. (2023-2024)

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Date Published: 09/01/2023 09:00 PM

Senate Bill No. 756

CHAPTER 158

An act to amend Sections 1055, 1121, 1834, 13267, 13303, and 13323 of, and to add Section 1051.1 to, the Water Code, relating to water.

[Approved by Governor September 01, 2023. Filed with Secretary of State September 01, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 756, Laird. Water: inspection: administrative procedure: notice: service.

(1) Existing law authorizes the State Water Resources Control Board to investigate all streams, stream systems, lakes, or other bodies of water, take testimony relating to the rights to water or the use of water, and ascertain whether water filed upon or attempted to be appropriated is appropriated under the laws of the state. Existing law requires the board to take all appropriate proceedings or actions to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state.

This bill would authorize the board, in conducting an investigation or proceeding for these purposes, to inspect the property or facilities of any person or entity to ascertain certain purposes are being met or compliance with specified requirements. The bill would authorize the board, if consent is denied for an inspection, to obtain an inspection warrant, as specified, or in the event of an emergency affecting public health and safety pertaining to the particular site under which the inspection is being sought, to conduct an inspection without consent or a warrant. The bill would authorize the board to participate in an inspection of an unlicensed cannabis cultivation site, as specified. Because the willful refusal of an inspection lawfully authorized by an inspection warrant is a misdemeanor, this bill would impose a state-mandated local program by expanding the application of a crime.

(2) Existing law authorizes the executive director of the board to issue a complaint to any person or entity on which administrative civil liability may be imposed pursuant to specified law, and requires the complaint to be served by personal notice or certified mail. Existing law requires the board to serve a copy of a decision or order on the parties by personal delivery or registered mail.

This bill would expand methods of notice for those purposes to include notice in accordance with the manner of service of a summons under specified provisions of the Code of Civil Procedure or by any method of physical delivery that provides a receipt.

(3) Existing law authorizes the board to issue a cease and desist order when it determines a specified violation is made. Existing law requires, in the event the violation is occurring or threatening to occur, the board to give notice by personal notice or certified mail, pursuant to which the party shall be informed that they may request a hearing not later than 20 days from the date on which the notice is received, to the person allegedly engaged in the violation.

This bill would expand methods of notice for those purposes to include notice in accordance with the manner of service of a summons under specified provisions of the Code of Civil Procedure, or by any method of physical delivery that provides a receipt.

(4) Existing law, the Porter-Cologne Water Quality Control Act, requires a person who discharges waste into the waters of the state in violation of waste discharge requirements or other order or prohibition issued by a California regional water quality control board or the State Water Resources Control Board to clean up the waste or to abate the effects of the waste. Existing law authorizes the regional board to expend available moneys to perform any cleanup, abatement, or remedial work required under those circumstances. Existing law authorizes a regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by the act, to investigate the quality of any waters of the state within its region.

This bill would authorize a regional board to participate in an inspection of an unlicensed cannabis cultivation site, as specified.

(5) Existing law requires cease and desist orders issued by the board pursuant to the act to be served by personal service or by registered mail upon the person being charged with the violation of the requirements and upon other affected persons who appeared at the hearing and requested a copy.

This bill would instead require the cease and desist orders to be served by personal service, certified mail, or by any method of physical delivery that provides a receipt, upon the person being charged with the violation of the requirements, and by first class or electronic mail upon other affected persons who appeared at the hearing and requested a copy.

(6) The act authorizes a regional board to administratively impose civil liability in connection with violations of certain water quality provisions. Existing law authorizes any executive officer of a regional board to issue a complaint to any person on whom administrative civil liability may be imposed, as specified.

This bill would additionally authorize service of a complaint or order by any method of physical delivery that provides a receipt.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. Section 1051.1 is added to the Water Code, to read:

1051.1. (a) In conducting an investigation or proceeding specified in Section 275 or 1051, or in Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, the board may inspect the property or facilities of any person or entity to ascertain whether the purposes of Section 100 and this division are being met or to ascertain compliance with any permit, license, certification, registration, decision, order, or regulation issued under Section 275, this division, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7.

(b) If consent to inspect is denied or otherwise withheld, the board is authorized to obtain an inspection warrant pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure for purposes of an inspection under this subdivision. However, in the event of an emergency affecting the public health or safety pertaining to the particular site under which the inspection is being sought, an inspection may be performed without consent or the issuance of a warrant.

(c) The board may participate in an inspection of an unlicensed cannabis cultivation site conducted pursuant to a warrant duly issued pursuant to the Penal Code when requested by the party seeking that warrant for unlicensed cannabis cultivation and its associated activities that may involve a violation of this code, including, but not limited to, diversion or use of water in violation of this division or of any principles and guidelines established by the board pursuant to Section 13149.

SEC. 2. Section 1055 of the Water Code is amended to read:

1055. (a) The executive director of the board may issue a complaint to any person or entity on which administrative civil liability may be imposed pursuant to Section 1052, Article 4 (commencing with Section 1845) of Chapter 12 of Part 2 of Division 2, or Section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

(b) The complaint shall be served by personal notice, certified mail, in accordance with the manner of service of a summons under Article 3 (commencing with Section 415.10) of, and Article 4 (commencing with Section 416.10) of, Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, or by any method of physical delivery that provides a receipt. The complaint shall inform the party served that the party may request a hearing not later than 20 days from the date the party was served and that the board

may adopt an order setting administrative civil liability based on the allegations set forth in the complaint without a hearing if the party does not sign a written request for a hearing that is delivered to, or received by mail by, the board within 20 days after the date the party was served. The hearing shall be before the board or a member of the board, in accordance with Section 183. For purposes of this subdivision, "physical delivery that provides a receipt" includes physical delivery methods that provide electronic confirmation of delivery to the intended address.

(c) The board, after any necessary hearing, may adopt an order setting administrative civil liability, or determining that a liability shall not be imposed.

(d) Orders setting administrative civil liability shall become effective and final upon issuance thereof and payment shall be made.

SEC. 3. Section 1121 of the Water Code is amended to read:

1121. The board shall serve a copy of a decision or order on the parties by personal delivery, certified mail, in accordance with the manner of service of a summons under Article 3 (commencing with Section 415.10) of, and Article 4 (commencing with Section 416.10) of, Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, or by any method of physical delivery that provides a receipt. For purposes of this section, "physical delivery that provides a receipt" includes physical delivery methods that provide electronic confirmation of delivery to the intended address.

SEC. 4. Section 1834 of the Water Code is amended to read:

1834. (a) In the event that a violation of a requirement described in subdivision (d) of Section 1831 is occurring or threatening to occur, the board shall give notice by personal notice, certified mail, in accordance with the manner of service of a summons under Article 3 (commencing with Section 415.10) of, and Article 4 (commencing with Section 416.10) of, Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, or by any method of physical delivery that provides a receipt pursuant to which the party shall be informed that they may request a hearing not later than 20 days from the date on which the notice is received. The notice shall contain a statement of facts and information that would tend to show the proscribed action, and notification of the requirements of subdivision (b). For purposes of this subdivision, "physical delivery that provides a receipt" includes physical delivery methods that provide electronic confirmation of delivery to the intended address.

(b) Unless a written request for a hearing signed by or on behalf of the notified party is delivered to or received by mail by the board within 20 days after receipt of the notice, the board may adopt a cease and desist order, based on the statement of facts and information set forth in the notice, without a hearing.

SEC. 5. Section 13267 of the Water Code is amended to read:

13267. (a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.

(b) (1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

(2) When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies. However, these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report.

(c) In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.

(d) The regional board may participate in an inspection of an unlicensed cannabis cultivation site conducted pursuant to a warrant duly issued pursuant to the Penal Code when requested by the party seeking that warrant, and when there is probable cause that the unlicensed cannabis cultivation and its associated activities may involve the discharge of waste in violation of this division or of any principles and guidelines established pursuant to Section 13149.

(e) The state board or a regional board may require any person, including a person subject to a waste discharge requirement under Section 13263, who is discharging, or who proposes to discharge, wastes or fluid into an injection well, to furnish the state board or regional board with a complete report on the condition and operation of the facility or injection well, or any other information that may be reasonably required to determine whether the injection well could affect the quality of the waters of the state.

(f) As used in this section, "evidence" means any relevant evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in a civil action.

(g) The state board may carry out the authority granted to a regional board pursuant to this section if, after consulting with the regional board, the state board determines that it will not duplicate the efforts of the regional board.

SEC. 6. Section 13303 of the Water Code is amended to read:

13303. Cease and desist orders of the board shall become effective and final upon issuance thereof. Copies shall be served forthwith by personal service, certified mail, or by any method of physical delivery that provides a receipt, upon the person being charged with the violation of the requirements, and by first class or electronic mail upon other affected persons who appeared at the hearing and requested a copy. For purposes of this section, "physical delivery that provides a receipt" includes physical delivery methods that provide electronic confirmation of delivery to the intended address.

SEC. 7. Section 13323 of the Water Code is amended to read:

13323. (a) Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

(b) The complaint shall be served by certified mail, in accordance with Article 3 (commencing with Section 415.10) of, and Article 4 (commencing with Section 416.10) of, Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, or by any method of physical delivery that provides a receipt, and shall inform the party so served that a hearing before the regional board shall be conducted within 90 days after the party has been served. For purposes of this subdivision, "physical delivery that provides a receipt" includes physical delivery methods that provide electronic confirmation of delivery to the intended address. The person who has been issued a complaint may waive the right to a hearing.

(c) In proceedings under this article for imposition of administrative civil liability by the state board, the executive director of the state board shall issue the complaint and any hearing shall be before the state board, or before a member of the state board in accordance with Section 183, and shall be conducted not later than 90 days after the party has been served.

(d) Orders imposing administrative civil liability shall become effective and final upon issuance thereof, and are not subject to review by any court or agency except as provided by Sections 13320 and 13330. Payment shall be made not later than 30 days from the date on which the order is issued. The time for payment is extended during the period in which a person who is subject to an order seeks review under Section 13320 or 13330. Copies of these orders shall be served by certified mail, in accordance with Article 3 (commencing with Section 415.10) of, and Article 4 (commencing with Section 416.10) of, Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, or by any method of physical delivery that provides a receipt, upon the party served with the complaint and shall be provided to other persons who appeared at the hearing and requested a copy. For purposes of this subdivision, "physical delivery that provides a receipt" includes physical delivery methods that provide electronic confirmation of delivery to the intended address.

(e) Information relating to hearing waivers and the imposition of administrative civil liability, as proposed to be imposed and as finally imposed, under this section shall be made available to the public by means of the internet.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.