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SB-1 California Environmental, Public Health, and Workers Defense Act of 2019. (2019-2020)

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CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

SENATE BILL

NO. 1

**Introduced by Senators Atkins, Portantino, and Stern
(Coauthor: Senator Hueso)
(Coauthor: Assembly Member Gloria)**

December 03, 2018

An act to add Section 2057 to, and to add and repeal Sections 2017 and 2076.7 of, the Fish and Game Code, to add and repeal Title 26 (commencing with Section 120000) of the Government Code, to add and repeal Section 116365.04 of the Health and Safety Code, and to amend Sections 13265 and 13350 of, and to add and repeal Sections 13250 and 13377.1 of, the Water Code, relating to public welfare.

LEGISLATIVE COUNSEL'S DIGEST

SB 1, Atkins. California Environmental, Public Health, and Workers Defense Act of 2019.

(1) The federal Clean Air Act regulates the discharge of air pollutants into the atmosphere. The federal Clean Water Act regulates the discharge of pollutants into water. The federal Safe Drinking Water Act establishes drinking water standards for drinking water systems. The federal Endangered Species Act of 1973 generally prohibits activities affecting threatened and endangered species listed pursuant to that act unless authorized by a permit from the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

Existing state law regulates the discharge of air pollutants into the atmosphere. The Porter-Cologne Water Quality Control Act regulates the discharge of pollutants into the waters of the state. The California Safe Drinking

Water Act establishes standards for drinking water and regulates drinking water systems. The California Endangered Species Act requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species, and generally prohibits the taking of those species.

This bill would, until January 20, 2025, require specified agencies to take prescribed actions regarding certain federal requirements and standards pertaining to air, water, and protected species, as specified. By imposing new duties on local agencies, this bill would impose a state-mandated local program.

This bill would revise the enforcement provisions of the Porter-Cologne Water Quality Control Act, as provided.

(2) Existing law provides for the enforcement of laws regulating the discharge of pollutants into the atmosphere and waters of the state. Existing law provides for the enforcement of drinking water standards. Existing law provides for the enforcement of the California Endangered Species Act.

This bill would, until January 20, 2025, authorize a person acting in the public interest to bring an action to enforce certain standards if specified conditions are satisfied.

(3) Existing federal law, including the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and the Federal Coal Mine Health and Safety Act of 1969, generally establishes standards for workers' health and safety.

Existing state law, including the California Occupational Safety and Health Act of 1973, generally establishes standards for workers' health and safety.

This bill would, until January 20, 2025, require specified agencies to take prescribed actions regarding certain requirements and standards pertaining to workers' health and safety.

(4) Existing law makes it unlawful to take a bird, mammal, fish, reptile, or amphibian, except as authorized by law.

This bill would make it unlawful for a person in California to transport, sell, offer for sale, possess with the intent to sell, receive, acquire, or purchase any fish, wildlife, or plant that was taken, possessed, transported, or sold in violation of any law, treaty, regulation, policy, or finding of the United States with regard to national or international trade of fish, wildlife, or plants in effect on January 19, 2017. The bill would make these provisions inoperative on January 20, 2025, and would repeal them on January 1, 2026.

Under existing law, a violation of the Fish and Game Code is a crime.

Because the above provision would be part of the Fish and Game Code, a violation of which would be a crime, this bill would impose a state-mandated local program.

(5) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

SECTION 1. Section 2017 is added to the Fish and Game Code, to read:

2017. (a) Unless otherwise authorized under state law, it is unlawful for a person in this state to transport, sell, offer for sale, possess with the intent to sell, receive, acquire, or purchase any fish, wildlife, or plant that was taken, possessed, transported, or sold in violation of any law, treaty, regulation, policy, or finding of the United States with regard to national or international trade of fish, wildlife, or plants in effect on January 19, 2017.

(b) Nothing in this section shall prohibit a person from transporting, selling, receiving, acquiring, or purchasing any cannabis or hemp as allowed under state law.

(c) (1) This section shall become inoperative on January 20, 2025, and, as of January 1, 2026, is repealed.

(2) Notwithstanding subparagraph (1), an action brought to enforce this section on or before January 20, 2025, may proceed to final judgment.

SEC. 2. Section 2057 is added to the Fish and Game Code, to read:

2057. The provisions of this chapter are measures "relating to the control, appropriation, use, or distribution of water" within the meaning of Section 8 of the federal Reclamation Act of 1902 (43 U.S.C. Sec. 383) and shall apply to the United States Bureau of Reclamation's operation of the federal Central Valley Project.

SEC. 3. Section 2076.7 is added to the Fish and Game Code, to read:

2076.7. (a) Notwithstanding Sections 2071 to 2075.5, inclusive, in order to ensure no backsliding as a result of a decrease in endangered or threatened species protections by the federal government, the commission may consider whether to adopt a regulation that adds a species to the list of endangered species or to the list of threatened species as an emergency regulation pursuant to Chapter 3.5 (commencing with Section 399) of Division 1 if the commission determines, in consultation with the department, that a federal action subsequent to January 19, 2017, under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) results in a decrease in protection for that species and listing under this chapter could provide protection for that species. If the commission lists a species by emergency regulation pursuant to this section, the department shall promptly commence a status review pursuant to Sections 2074.6 and 2074.8, and the commission shall determine whether to list the species beyond the duration of the emergency pursuant to Sections 2075 and 2075.5.

(b) A federal action warranting a determination by the commission pursuant to subdivision (a) may include, but is not limited to, a decision by either the United States Fish and Wildlife Service or the National Marine Fisheries Service not to protect a species or to decrease protection to a species listed under the federal Endangered Species Act of 1973 that relies, in whole or in part, upon any amendments to regulations implementing the federal Endangered Species Act of 1973 that occurred after January 19, 2017.

(c) In authorizing the take of any species listed under this section during the pendency of the emergency regulation, the commission, in authorizing the take of any species pursuant to Section 2084, or the department, in authorizing the take of any species pursuant to this chapter, may apply the protections provided by any federal biological opinions, incidental take permits, incidental take statements, or rules promulgated under Section 4(d) of the federal Endangered Species Act of 1973, in effect as of January 19, 2017, unless the commission or the department determines that those protections do not satisfy the requirements of this chapter.

(d) The department shall monitor and report to the commission at least quarterly with respect to any actions of the federal government that may constitute an emergency as described in this section.

(e) For authorizations issued by the department pursuant to subdivision (c), the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply.

(f) The Legislature intends that the commission and department will be provided sustainable funding sufficient to fully implement the requirements of this section and resulting obligations.

(g) The commission shall notify affected or interested persons of the adoption of any emergency regulation under this section pursuant to the methods described in Section 2074.4.

(h) This section is adopted to protect against direct challenges to species protection from the current federal administration and accordingly shall become inoperative on January 20, 2025, and, as of January 1, 2026, is repealed.

SEC. 4. Title 26 (commencing with Section 120000) is added to the Government Code, to read:

TITLE 26. California Environmental, Public Health, and Workers Defense Act of 2019
DIVISION 1. General Provision

120000. This title shall be known, and may be cited, as the California Environmental, Public Health, and Workers Defense Act of 2019.

DIVISION 2. Environment, Natural Resources, Public Health, and Workers Health and Safety
CHAPTER 1. Findings and Declarations

120010. (a) The Legislature finds and declares all of the following:

(1) For over eight decades, California and its residents have relied on federal laws, including the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.), the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the federal Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.), the federal Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 651 et seq.), and the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. Sec. 801 et seq.), along with their implementing regulations and remedies, to protect our state's public health, safety, environment, and natural resources.

(2) These federal laws establish standards that serve as the baseline level of public health, safety, and environmental protection, while expressly authorizing states like California to adopt more protective measures.

(3) Beginning in 2017, a new presidential administration and United States Congress have signaled a series of direct challenges to these federal laws and the protections they provide, as well as to the underlying science that makes these protections necessary, and to the rights of the states to protect their own environment, natural resources, and public health and safety as they see fit.

(b) It is therefore necessary for the Legislature to enact legislation that will ensure continued protections for the environment, natural resources, and public health and safety in the state even if the federal laws specified in paragraph (1) of subdivision (a) are undermined, amended, or repealed.

120011. The purposes of this division are to do all of the following:

(a) Retain protections afforded under the federal laws specified in paragraph (1) of subdivision (a) of Section 120010 and regulations implementing those federal laws in existence as of January 19, 2017, regardless of actions taken at the federal level.

(b) Protect public health, safety, and welfare from any actual or potential adverse effect that reasonably may be anticipated to occur from hazards and pollution, including the effects of climate change.

(c) Preserve, protect, and enhance the environment and natural resources in California, including, but not limited to, the state's national parks, national wilderness areas, national monuments, national seashores, and other areas with special national or regional natural, recreational, scenic, or historic value.

(d) Prevent work-related and environmental illness, injury, or death from chemicals and other pollutants and hazards.

(e) Ensure that economic growth will occur in a manner consistent with the protection of public health and safety and the environment, and the preservation of existing natural resources.

(f) Ensure that any decision made by a public agency that may adversely impact public health and safety, the environment, or natural resources is made only after careful evaluation of all the consequences of that decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

CHAPTER 2. General Provisions

120030. (a) A state agency may adopt standards or requirements pursuant to this title, including, but not limited to, by emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(b) The adoption of emergency regulations in furtherance of this title shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, emergency regulations adopted by a state agency under this title shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised or repealed by the state agency, or January 20, 2025, whichever comes first.

CHAPTER 3. Operative Provisions

Article 1. Air

120040. For purposes of this article, the following definitions apply:

- (a) "Air district" means an air quality management or air pollution control district.
- (b) "Baseline federal standards" means federal standards in effect as of January 19, 2017, that were not otherwise permanently enjoined by a federal court as of that date.
- (c) "Federal standards" means federal laws or federal regulations implementing the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), and which may affect the achievement and maintenance of any federal ambient air quality standard, hazardous air pollutant standard, or greenhouse gas emission reduction applicable to the state, including, but not limited to, federal requirements for a state implementation plan, federal requirements for the transportation conformity program, and federal requirements for the prevention of significant deterioration.
- (d) "State analogue statute" means the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) or Division 26 (commencing with Section 39000) of the Health and Safety Code.
- (e) "State board" means the State Air Resources Board.

120041. Except as otherwise authorized by state law, all of the following apply:

- (a) The state board shall regularly assess proposed and final changes to the federal standards.
- (b) (1) At least once every six months, the state board shall publish on its internet website and in the California Regulatory Notice Register a list of changes made to the baseline federal standards that may affect the achievement and maintenance of any federal ambient air quality standard, hazardous air pollutant standard, or greenhouse gas emission reduction applicable to the state that are subject to the jurisdiction of the state board. The state board may opt not to publish this report if it determines, by majority vote in a public meeting, that there has been no change to a federal standard as compared to the baseline federal standard during an applicable six-month time period, and notifies the appropriate policy and fiscal committees of the Legislature.
- (2) If the state board determines that a change to the federal standards may affect the achievement and maintenance of any federal ambient air quality standard, hazardous air pollutant standard, or greenhouse gas emission reduction applicable to the state, the state board shall adopt a measure or use a nonregulatory option in order to maintain the state's protections to be at least as protective as the baseline federal standards.
- (3) The state board shall publish its list, any preliminary determinations, and consideration for adoption at least 30 days before a vote on adoption on its internet website for public comment.
- (c) If the state board decides to adopt a measure pursuant to subdivision (b), the state board shall adopt the measure by either of the following procedures:
- (1) As an emergency regulation in accordance with Section 120030.
- (2) By promulgation or amendment of a state policy, plan, or regulation.
- (d) Notwithstanding any other law, the state board, when adopting a measure under paragraph (2) of subdivision (c) may adopt those measures in accordance with Section 100 of Title 1 of the California Code of Regulations and the measures shall be deemed to be a change without regulatory effect pursuant to paragraph (6) of subdivision (a) of that section and not subject to additional notice, procedural, or other considerations. Nothing in this chapter shall affect the imposition of sanctions under the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).
- (e) This article does not prohibit the state board or air districts from establishing rules and regulations for California that are more stringent than federal standards.

120042. (a) An action may be brought in superior court by a person in the public interest against the owner or operator of a source alleged to be in violation of any measure adopted under this article by the state board if the citizen suit provision set forth in Section 7604 of Title 42 of the United States Code is amended to substantially restrict, condition, abridge, or repeal the citizen suit provision, including by limiting recovery of fees and costs.

(b) An action may be brought pursuant to this section if both of the following requirements are met:

- (1) At least 60 days before initiating the action, a complainant provides a written notice to the Attorney General and the counsel for the state board, and counsel for the air district and district attorney in whose jurisdiction the

violation is alleged to have occurred, and the defendant, identifying the specific provisions of the measure alleged to be violated.

(2) The Attorney General, counsel of the state board, and counsel for the air district and the district attorney in whose jurisdiction the violation is alleged to have occurred has not commenced an action or has not been diligently prosecuting an administrative, civil, or criminal action.

(c) Upon filing the action, as well as serving the defendant, the complainant shall serve a copy of the action to the Attorney General, the counsel for the state board, and the counsel for the air district and the district attorney in whose jurisdiction the violation is alleged to have occurred.

(d) Notwithstanding any other law requiring or authorizing higher penalties, civil penalties for a violation of any measure adopted pursuant to this article shall not exceed twenty-five thousand dollars (\$25,000) per day of violation. All penalties assessed and recovered in a civil action brought pursuant to this section or by settlement shall be deposited in the Air Pollution Control Fund created pursuant to Section 43015 of the Health and Safety Code and separately accounted for in that fund. Those moneys shall be expended by the state board, upon appropriation by the Legislature, consistent with the purposes of the Air Pollution Control Fund. A citizen who prevails in a suit pursuant to this section shall be entitled to attorney's fees and costs from the defendant, and may recover in proportion to the success of the claim if not all claims are adjudicated in their favor.

(e) This section does not limit other remedies and protections available under state or federal law.

Article 2. Water

120050. For purposes of this article, the following definitions apply:

(a) "Baseline federal standards" means federal standards in effect as of January 19, 2017, that were not otherwise permanently enjoined by a federal court as of that date.

(b) "Board" means the State Water Resources Control Board.

(c) "Federal standards" means federal laws or federal regulations implementing the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.) and the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.) in effect as of January 19, 2017, including, but not limited to, water quality standards, effluent limitations, and drinking water standards.

(d) "Regional board" means a regional water quality control board.

(e) "State analogue statute" mean the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) or the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of Division 103 of the Health and Safety Code).

120051. (a) (1) In the event that the citizen suit provision set forth in Section 1365 of Title 33 of the United States Code is amended to substantially restrict, condition, abridge, or repeal the citizen suit provision, including limiting the recovery of fees and costs, an action may be brought in superior court by a person in the public interest to enforce baseline federal standards, state standards incorporated by or adopted under the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), as authorized pursuant to Title 33 of the United States Code, or other waste discharge requirements, as authorized pursuant to the Section 1342(b) of Title 33 of the United States Code, and for which a cause of action was available pursuant to Section 1365 of Title 33 of the United States Code, and implementing regulations, in effect on January 19, 2017, for those baseline federal standards, state standards, or waste discharge requirements.

(2) In the event that the citizen suit provision set forth in Section 300j-8 of Title 42 of the United States Code is amended to substantially restrict, condition, abridge, or repeal the citizen suit provision, including limiting the recovery of fees and costs, an action may be brought in superior court by a person in the public interest to enforce the baseline federal standards, state standards enacted pursuant to the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of Division 103 of the Health and Safety Code), as authorized pursuant to Section 300g-2 of Title 42 of the United States Code, or other permit conditions as authorized pursuant to Section 300g-2 of Title 42 of the United States Code, and for which a cause of action was available pursuant to Section 300j-8 of Title 42 of the United States Code in effect on January 19, 2017, for those baseline federal standards, state standards, or permit conditions.

(b) An action may be brought in the superior court by a person in the public interest exclusively to enforce baseline federal standards in effect pursuant to Section 116365.04 of the Health and Safety Code, or Section 13250 or 13377.1 of the Water Code, if citizen suit enforcement of those standards is no longer available under federal law.

(c) At least 60 days before initiating an action pursuant to this section, the plaintiff shall provide a written notice to the board, the Attorney General, and the regional board, a district attorney, county counsel, and prosecutor in whose jurisdiction the violation is alleged to have occurred, and to the alleged violator identifying the specific violation alleged.

(d) An action shall not be commenced pursuant to this section if the United States Environmental Protection Agency, the board, the Attorney General, or a regional board, a district attorney, a city attorney, a county counsel, or a prosecutor in whose jurisdiction the violation is alleged to have occurred has commenced and is diligently prosecuting an administrative, civil, or criminal enforcement proceeding against the alleged violator.

(e) Upon filing the action, the complainant shall notify the Attorney General that the action has been filed.

(f) The court may award attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure, and expert fees and court costs pursuant to Section 1032 of the Code of Civil Procedure, as appropriate, for an action brought pursuant to this section.

(g) Civil penalties that may be imposed by a superior court for an action brought pursuant to this section are those that would have been available under the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.) or the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.) and their implementing regulations, in effect on January 19, 2017, if those provisions were still in effect and any baseline federal standard being enforced were still enforceable under those provisions. Notwithstanding any law requiring or authorizing higher penalties, civil penalties assessed pursuant to this section shall not exceed the civil penalty levels under Part 19 (commencing with Section 19.1) of Subchapter A of Chapter 1 of Title 40 of the Code of Federal Regulations. Penalties assessed and recovered in a civil action brought pursuant to this section shall be deposited in the Waste Discharge Permit Fund created pursuant to Section 13260 of the Water Code and separately accounted for in that fund. Those moneys shall be expended by the board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443 of the Water Code. This subdivision shall not apply to settlement agreements or consent decrees.

(h) This section does not limit other remedies and protections available under state or federal law.

120052. This article does not affect the process by which voluntary agreements are entered into to assist in the implementation of new water quality standards lawfully adopted by the board.

Article 3. Worker Health and Safety

120070. For purposes of this article, the following definitions apply:

(a) "Baseline federal standards" means federal standards in effect as of January 19, 2017, that were not otherwise permanently enjoined by a federal court as of that date.

(b) "Board" means the Occupational Safety and Health Standards Board.

(c) "Department" means the Department of Industrial Relations.

(d) "Federal standards" means health and safety standards set forth in the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. Sec. 201 et seq.), the federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Sec. 651 et seq.), the Federal Coal Mine Health and Safety Act of 1969, as amended (30 U.S.C. Sec. 801 et seq.), or in regulations and guidelines established pursuant to those federal statutes.

(e) "State analogue statute" means the Labor Code, including the California Occupational Safety and Health Act of 1973 (Division 5 (commencing with Section 6300) of the Labor Code).

120071. Except as otherwise authorized by state law, all of the following apply:

(a) The board and the department shall assess proposed and final changes made after January 19, 2017, to the federal standards.

(b) (1) At least quarterly, the board and the department shall publish on their internet websites and in the California Regulatory Notice Register a list of changes made to the federal standards and provide an assessment on whether a change made to the federal standards is more or less protective of worker health and safety than the baseline federal standards.

(2) If the board or the department, as appropriate, determines that a change to the federal standards is less protective of worker health and safety than the baseline federal standards, the board or the department, as appropriate, shall assess whether current corresponding state standards are at least as protective as the baseline federal standards. If the current corresponding state standards are not at least as protective as the baseline federal standards, the board or department, as appropriate, shall consider whether it should adopt the baseline federal standards as a measure in order to ensure that the state's protections are at least as stringent as the baseline federal standards.

(3) The board and the department shall publish its list, assessment, and consideration for adoption at least 30 days before a vote on adoption on its internet website for public comment.

(c) If the board or the department, as appropriate, decides to adopt a measure pursuant to subdivision (b), the board or the department shall adopt the measure by either of the following:

(1) An emergency regulation in accordance with Section 120030.

(2) A promulgation or amendment of a state policy, plan, or regulation.

(d) Notwithstanding any other law, the board or department, as appropriate, when adopting a measure under subdivision (c) may adopt those measures in accordance with Section 100 of Title 1 of the California Code of Regulations, and the measures shall be deemed to be a change without regulatory effect pursuant to paragraph (6) of subdivision (a) of that section and not subject to additional notice, procedural, or other considerations contained in state analogue statutes, as long as the measure adopts the baseline federal standards without substantial modification.

(e) This article does not prohibit the board or the department from establishing rules and regulations for California that are more stringent than the baseline federal standards.

DIVISION 3. Miscellaneous

120100. The provisions of this title are severable. If any provision of this title or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

120102. (a) This title shall become inoperative on January 20, 2025, and, as of January 1, 2026, is repealed.

(b) Notwithstanding subdivision (a), any action brought pursuant to this title on or before January 20, 2025, may proceed to a final judgment.

SEC. 5. Section 116365.04 is added to the Health and Safety Code, to read:

116365.04. (a) This section applies to a national primary drinking water standard adopted by the United States Environmental Protection Agency and is in effect on January 19, 2017, except where the United States Environmental Protection Agency adopts a more stringent standard after January 19, 2017.

(b) (1) On or before June 30, 2020, the state board shall adopt a primary drinking water standard at least as stringent as the national primary drinking water standard that was in effect on January 19, 2017.

(2) If the state's primary drinking water standard is not materially different in substance and effect than the requirements of the national primary drinking water standard that was in effect on January 19, 2017, the state board may adopt the primary drinking water standard pursuant to subdivision (a) as an emergency regulation, even if the national standard has been repealed or replaced by a less stringent standard. The adoption of a regulation pursuant to this paragraph is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, 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 state board pursuant to this section is not subject to review by the Office of Administrative Law and shall remain in effect until revised by the state board. Notwithstanding Section 15300.2 of Title 14 of the California Code of Regulations, actions of the state board

under this paragraph shall be deemed to be within Section 15308 of Title 14 of the California Code of Regulations, provided that those actions do not involve relaxation of primary drinking water standards in effect under this chapter.

(c) This section is not a limitation on the authority of the state board to do either of the following:

(1) To adopt a primary drinking water standard that maintains or provides greater protection of the health of persons than provided by a national primary drinking water standard that was in effect on January 19, 2017.

(2) To adopt a regulation under subdivision (j) of section 116365 in lieu of establishing a maximum contaminant level.

(d) This section shall become inoperative on January 20, 2025, and, as of January 1, 2026, is repealed.

SEC. 6. Section 13250 is added to the Water Code, to read:

13250. (a) Except as provided in subdivision (b), regulations adopted by the United States Environmental Protection Agency setting water quality standards or policies for implementation of those standards for waters within the external boundaries of the state and in effect on January 19, 2017, shall have the same effect as provisions of water quality control plans under this division.

(b) This section does not apply if either of the following situations occur:

(1) A regulation adopted by the United States Environmental Protection Agency after January 19, 2017, sets a more stringent standard or requirement.

(2) A water quality control plan, state policy for water quality control, or plan or plan amendment, adopted or approved after the federal regulation, sets a beneficial use, water quality objective, or implementation policy to replace the federal regulation.

(c) This section shall become inoperative on January 20, 2025, and, as of January 1, 2026, is repealed.

SEC. 7. Section 13265 of the Water Code is amended to read:

13265. (a) (1) Any person discharging waste in violation of Section 13264, after such violation has been called to the person's attention in writing by the regional board, is guilty of a misdemeanor. Each day of such discharge shall constitute a separate offense.

(b) (1) Any person discharging waste in violation of Section 13264 may be civilly liable in accordance with this subdivision.

(2) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount that shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(3) Civil liability may be imposed by the superior court in accordance with Articles 5 (commencing with Section 13350) and 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount that shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(c) (1) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, in violation of Section 13264 is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (d). That liability shall not be imposed if the discharger is not negligent and immediately files a report of the discharge with the board, or if the regional board determines that the violation of Section 13264 was insubstantial.

(2) This subdivision shall not be applicable to any waste discharge that is subject to Chapter 5.5 (commencing with Section 13370).

(d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount that shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an

amount that shall not exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

SEC. 8. Section 13350 of the Water Code is amended to read:

13350. (a) A person who (1) violates a cease and desist order, cleanup and abatement order, waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, or (2) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

(b) (1) A person who, without regard to intent or negligence, causes or permits a hazardous substance to be discharged in or on any of the waters of the state, except in accordance with waste discharge requirements or other provisions of this division, shall be strictly liable civilly in accordance with subdivision (d) or (e).

(2) For purposes of this subdivision, the term "discharge" includes only those discharges for which Section 13260 directs that a report of waste discharge shall be filed with the regional board.

(3) For purposes of this subdivision, the term "discharge" does not include an emission excluded from the applicability of Section 311 of the federal Clean Water Act (33 U.S.C. Sec. 1321) pursuant to United States Environmental Protection Agency regulations interpreting Section 311(a)(2) of the federal Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

(c) A person shall not be liable under subdivision (b) if the discharge is caused solely by any one or combination of the following:

(1) An act of war.

(2) An unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(3) Negligence on the part of the state, the United States, or any department or agency thereof. However, this paragraph shall not be interpreted to provide the state, the United States, or any department or agency thereof a defense to liability for any discharge caused by its own negligence.

(4) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(5) Any other circumstance or event that causes the discharge despite the exercise of every reasonable precaution to prevent or mitigate the discharge.

(d) The court may impose civil liability either on a daily basis or on a per gallon basis, but not on both.

(1) The civil liability on a daily basis shall not exceed fifteen thousand dollars (\$15,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis shall not exceed twenty dollars (\$20) for each gallon of waste discharged.

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both.

(1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) When there is no discharge, but a cease and desist order or cleanup and abatement order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

(2) The civil liability on a per gallon basis shall not exceed ten dollars (\$10) for each gallon of waste discharged.

(f) A regional board shall not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

(g) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess, and recover the sums. Except in the case of a violation of a cease and desist order, a regional board or the state board shall make the request only after a hearing, with due notice of the hearing given to all affected persons. In determining the amount to be imposed, assessed, or recovered, the court shall be subject to Section 13351.

(h) Article 3 (commencing with Section 13330) and Article 6 (commencing with Section 13360) apply to proceedings to impose, assess, and recover an amount pursuant to this article.

(i) A person who incurs any liability established under this section shall be entitled to contribution for that liability from a third party, in an action in the superior court and upon proof that the discharge was caused in whole or in part by an act or omission of the third party, to the extent that the discharge is caused by the act or omission of the third party, in accordance with the principles of comparative fault.

(j) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, except that no liability shall be recoverable under subdivision (a) for a violation for which liability is recovered under Section 13268 or under subdivision (b) for any discharge for which liability is recovered under Section 13385.

(k) Notwithstanding any other law, all funds generated by the imposition of liabilities pursuant to this section shall be deposited into the Waste Discharge Permit Fund. These moneys shall be separately accounted for, and shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443, or to assist in implementing Chapter 7.3 (commencing with Section 13560).

SEC. 9. Section 13377.1 is added to the Water Code, to read:

13377.1. (a) (1) Except as provided in paragraph (2) or (3), if a requirement of Section 1312, 1316, 1317, 1343, or 1344 of Title 33 of the United States Code, as amended, or federal regulations implementing those sections, in effect on January 19, 2017, but no longer in effect, sets a more stringent requirement than is required under Section 13377, waste discharge requirements or dredged or fill material permits under this chapter shall apply and ensure compliance with that more stringent requirement.

(2) Paragraph (1) does not apply where the state board or a regional board determines that the more stringent requirement has been replaced by other state or federal requirements that provide comparable or greater protection of water quality.

(3) Paragraph (1) does not apply if the state board or a regional board determines both of the following:

(A) Requiring compliance with the more stringent requirement is not required under the antibacksliding requirements of Section 1342(o) of Title 33 of the United States Code, as amended, and Section 122.44(l) of Title 40 of the Code of Federal Regulations as those provisions were in effect on January 17, 2017, or the antidegradation provisions of Section 131.12 of Title 40 of the Code of Federal Regulations as that section was in effect on January 17, 2017.

(B) Requiring compliance with the more stringent requirement would have unreasonable adverse environmental impacts or, for a requirement other than for a toxic pollutant under Section 1312, 1317(a), or 1317(b)(1) of Title 33 of the United States Code, as amended, requiring compliance would impose costs that are wholly disproportionate with the benefits to water quality.

(b) This section shall become inoperative on January 20, 2025, and, as of January 1, 2026, is repealed.

SEC. 10. The amendments made to this measure to strike out sections shall not, in any manner, be construed by a court or other body as legislative intent to affect the interpretation of existing law.

SEC. 11. The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid

provision or application.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by certain mandates in this act or because 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.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.