

- **Board of Directors**
Communications and Legislation Committee

May 16, 2006 Board Meeting

9-5

Subject

Report on AB 1244 (Wolk, D-Davis): California Bay-Delta Authority

Description

In 2002, Metropolitan's Board developed its position related to an effective governance structure for CALFED through the adoption of a "Policy Principle on CALFED Bay-Delta Process." In part, that principle stresses Metropolitan's support of a governance structure that provides a unified and consistent approach to managing the overall CALFED Bay-Delta Program, which would assure effective, balanced, coordinated and timely implementation in all Program areas.

The CALFED Bay-Delta Authority Act, enacted by the California Legislature in 2002, identifies the California Bay-Delta Authority to implement the CALFED Bay-Delta Program, which was followed by federal legislation in 2004 authorizing the federal CALFED agencies to participate in the Authority as nonvoting members. The Authority and CALFED Program have had successes, but its sheer scope and bureaucratic complexity interfere with implementation of many aspects of the CALFED Program. In November 2005, the Little Hoover Commission issued a report on the Authority's governance and implementation of the Program, which recommended several actions to improve the Authority's effectiveness.

Assemblywoman Lois Wolk (D-Davis) is sponsoring AB 1244 ([Attachment 1](#)), a bill to modify the existing CALFED Bay-Delta Authority Act to revise a number of provisions dealing with the Authority's practice. The bill was introduced before development of the Little Hoover Commission report on CALFED governance and consequently does not contain a number of the Hoover Commission's recommendations. However, the bill could be an appropriate vehicle to implement the Commission's recommendations.

As introduced, AB 1244 would extend an existing sunset date for the Authority until January 1, 2010 and make a number of primarily cleanup amendments to existing statutes, including:

- Adjusting the annual process for reporting to the Governor, Legislature and Congress on CALFED implementation and for determining whether the CALFED Program is being implemented in a balanced manner;
- Making technical revisions required by the enactment of the CALFED Bay-Delta Authority Act, which authorized federal CALFED agencies to participate in the Authority as nonvoting members;
- Expressly authorizing the Authority to enter into cooperative agreements with public or private entities and to comment on CALFED implementing agency regulations and other actions to determine consistency with the CALFED Record of Decision; and
- Authorizing the Authority to appoint a chief counsel and making other changes to its employment practices.

Some of these changes would help make the Authority more effective, but would not implement the Little Hoover Commission's more significant reform recommendations. However, Assemblywoman Wolk has indicated that she intends to amend the bill to incorporate those recommendations. Metropolitan's policy principles are directed toward amendments that would make CALFED governance more consistent with the recommendations of the Little Hoover Commission. These recommendations would move governance away from a diffuse commission or authority and place it with the Secretary of Resources Agency in the direct chain of command of the Governor. In addition, Assemblywoman Wolk is considering restructuring the California Water Commission as an advisory

body within the Resources Agency to advise and make recommendations on any matters regarding the CALFED Program. Metropolitan staff intends to support the work of Assemblywoman Wolk and her staff to develop a bill that will fully implement the appropriate reforms recommended by the Little Hoover Commission, consistent with Metropolitan's board-adopted principles regarding CALFED governance.

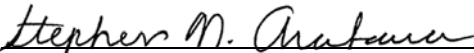
Policy

By Minute Item No. 44814, dated March 12, 2002, the Board adopted Metropolitan Policy Principles on CALFED Bay-Delta Process.

Metropolitan Water District of Southern California Board Adopted Policy Principles, pages 45-47, June 2005

Fiscal Impact

None



Stephen N. Arakawa
Manager, Water Resource Management

5/2/2006
Date



Jeffrey Kightlinger
General Manager

5/3/2006
Date

Attachment 1 – Assembly Bill 1244

BLA #4494

AMENDED IN ASSEMBLY JANUARY 19, 2006

AMENDED IN ASSEMBLY MAY 10, 2005

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL**No. 1244****Introduced by Assembly Member Wolk**

February 22, 2005

An act to amend Sections 79401, 79402, 79403.5, 79412, 79415, 79420, 79421, 79440, 79450, 79452, 79460 and 79475 of, to amend and repeal Sections 79420, 79423, 79453, and 79455; of, to add Sections 79472 and 79473 to, and to repeal Sections 79406 and 79422 of, the Water Code, relating to water, ~~and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1244, as amended, Wolk. CALFED Bay□Delta Program.

~~(1) Existing~~

Existing law, the California Bay□Delta Authority Act, establishes in the Resources Agency the California Bay□Delta Authority, with membership as prescribed, including state and federal government representatives, ~~until January 1, 2006, unless a certain determination is made.~~ The state act requires the authority, on or before November 15 of each year, to review progress in implementing the California Bay□Delta Program and, on or before December 15 of each year, to submit a report to various persons and entities that describes the implementation of the program for the prior fiscal year. The state act authorizes the Governor, in consultation with the United States Secretary of the Interior, to appoint a director. The state act requires

□

the implementing agencies, as defined, to annually submit to the director their program plan and proposed budget, as prescribed.

Existing federal law, the CALFED Bay-Delta Authorization Act authorizes the represented federal agencies to participate in the program and authorizes the secretary and federal agency heads to carry out program activities in listed categories.

This bill would modify the state act to clarify the relationship of the authority and its implementing agencies with the federal government with regard to the program, and to conform the state act to the federal act, including changing the title of the program to the CALFED Bay-Delta Program, requiring state agencies to cooperate with federal agencies to meet the goals and objectives of the program, requiring state agencies to comply with the state act without respect to the cooperation of federal agencies, and removing references to federal authorizing legislation. The bill would establish a board to govern the authority, comprised of the existing representatives, members, and ex officio members of the authority. The bill would designate the member from the Bay-Delta Public Advisory Committee as a public member.

The bill would authorize the authority to enter into cooperative agreements with individuals, associations, private entities, boards of supervisors, and with state or federal departments, divisions, bureaus, boards, or commissions for the purpose of carrying out the program.

The bill would require that report on or before February 15 of each year, in coordination with the secretary. The bill would require the authority to review, and comment to the appropriate implementing agency or agencies with regard to, regulations, guidelines, criteria, and awards proposed by the implementing agency or agencies to carry out a specified grant program.

The bill would delete an existing requirement to develop, and report on, an administrative efficiency pilot program.

The bill would additionally authorize the Governor, in consultation with the secretary, to appoint a chief counsel.

The bill would authorize the Bay-Delta Public Advisory Committee to be treated as a state advisory committee. The bill would exempt members of the committee or its subcommittees from certain financial interest restrictions when they are advising and making recommendations to the authority and director on proposed grant solicitation packages.

The bill would authorize the lead scientist and the director to seek assistance and review from scientific experts in the development of scientific programs, performance measures, research questions and other scientific issues. The bill would exempt a member of the Independent Science Board (ISB) or other science advisory panel, or an independent scientific expert who assists an implementing agency or the authority from certain financial interest restrictions with regard to participation in the making of a contract that results from a competitive process to fund scientific research, unless the scientific expert participated directly in the preparation of the grant solicitation package or the selection of projects to be funded. The bill would exempt from the Bagley-Keene Open Meeting Act the ISB and any other independent science panel established to assist the implementing agencies and the authority, but would subject those entities to other public accountability requirements, as prescribed.

The bill would extend the operation of the state act until January 1, 2010, unless a certain determination is made.

~~(2) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State mandated local program: no.

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

- 1 SECTION 1. Section 79401 of the Water Code is amended to
- 2 read:
- 3 79401. The Legislature finds and declares all of the
- 4 following:
- 5 (a) The San Francisco Bay/Sacramento San Joaquin Delta
- 6 Estuary is the largest estuary on the West Coast of the United
- 7 States. It includes over 738,000 acres in five counties. The
- 8 tributaries, sloughs, and islands support over 750 plant and
- 9 animal species.
- 10 (b) The bay delta, its tributaries, and watershed are critical to
- 11 California's economy, supplying drinking water for two thirds of
- 12 Californians and irrigation water for over 7,000,000 acres of the
- 13 most highly productive agricultural land in the world. It also
- 14 supports 80 percent of the state's commercial salmon fisheries.
- 15 (c) The bay delta is the hub of California's two largest water
- 16 distribution systems—the Central Valley Project, operated by the

1 federal Bureau of Reclamation and the State Water Project,
2 operated by the California Department of Water Resources. It
3 also provides the conveyance of floodwaters from most of the
4 rivers in the Central Valley.

5 (d) Conflicts currently exist regarding water use for the
6 purposes of water quality, fish protection, and water supply that
7 demonstrate how little flexibility the state's water supply systems
8 have to meet the state's growing demand for water and the need
9 to protect the environment.

10 (e) A solution to these problems requires state, federal, tribal,
11 and local action in numerous regions throughout the state, not
12 only in the bay delta itself, but also in the bay delta watershed
13 and the areas that depend on water exported from the bay delta.
14 The CALFED Bay Delta Program is divided into the following
15 five regions:

- 16 (1) Sacramento and San Joaquin River Delta.
- 17 (2) San Francisco Bay.
- 18 (3) Sacramento Valley.
- 19 (4) San Joaquin Valley.
- 20 (5) Southern California.

21 (f) Numerous state and federal agencies have some role in
22 managing or regulating the natural resources of the bay delta and
23 its watershed. A coordinated implementation structure and
24 organization is necessary for the effective implementation of the
25 CALFED Bay Delta Program. The state and federal agencies
26 participating in the program include all of the following: the
27 Resources Agency, Department of Water Resources, Department
28 of Fish and Game, Department of Food and Agriculture,
29 California Environmental Protection Agency, State Water
30 Resources Control Board, State Department of Health and
31 Human Services, Department of Conservation, Department of
32 Parks and Recreation, Delta Protection Commission, Bay
33 Conservation and Development Commission, State Reclamation
34 Board, United States Department of the Interior, United States
35 Department of Agriculture, United States Bureau of Reclamation,
36 United States Fish and Wildlife Service, United States
37 Geological Survey, United States Bureau of Land Management,
38 United States National Marine Fisheries Service, United States
39 Environmental Protection Agency, United States Army Corps of
40 Engineers, United States Natural Resources Conservation

1 Service, United States Forest Service, and Western Area Power
2 Administration.

3 (g) The agencies participating in the CALFED Bay-Delta
4 Program have prepared a 30-year plan to coordinate existing
5 programs and direct new programs to improve the quality and
6 reliability of the state’s water supplies and to restore the
7 ecological health of the bay-delta watershed.

8 (h) To ensure efficiency, transparency, and accountability in
9 decisionmaking, the implementation of the CALFED Bay-Delta
10 Program requires the establishment of an authority. The authority
11 is intended to accomplish all of the following:

12 (1) Provide accountability to the Legislature, Congress, and
13 interested parties for the program’s performance.

14 (2) Promote the implementation of the program in a balanced
15 manner.

16 (3) Provide consistent monitoring, assessment, and reporting
17 of the agencies’ individual and cumulative actions.

18 (4) Provide the use of sound, consistent science across all
19 program elements.

20 (5) Coordinate existing and new government programs to meet
21 common goals, avoid conflicts, and eliminate redundancy and
22 waste.

23 (6) Oversee coordinated implementation of the CALFED
24 Bay-Delta Program in a manner that is consistent with the
25 mission statement, goals, and objectives of the CALFED
26 Bay-Delta Program Record of Decision, dated August 28, 2000,
27 or as it may be amended.

28 (7) Promote the development and implementation of regional
29 programs to advance the program elements.

30 (i) The successful implementation of the CALFED Bay-Delta
31 Program will require the full cooperation and participation of
32 many federal agencies. Federal agencies are invited to participate
33 in the authority and its activities, as described in this division, to
34 the extent authorized under federal law.

35 SEC. 2. Section 79402 of the Water Code is amended to read:

36 79402. Unless the context otherwise requires, the following
37 definitions set forth in this section govern the construction of this
38 division:

39 (a) “Authority” means the California Bay-Delta Authority.

1 (b) “Balance” or “balanced implementation” means the
2 implementation of projects, programs, or other actions in a
3 manner that meets both of the following requirements:

4 (1) consistent with the implementation schedule and
5 milestones described in the CALFED Bay-Delta Program Record
6 of Decision, dated August 28, 2000, or as it may be amended.

7 (2) Results in concurrent improvement in all program elements
8 in a manner that ensures that improvements in some program
9 elements are not made without corresponding improvements in
10 other program elements.

11 (c) “Bay-Delta” means the San Francisco Bay/Sacramento-San
12 Joaquin Delta Estuary.

13 (d) “Bay-Delta Public Advisory Committee” means the
14 Bay-Delta Public Advisory Committee established by charter
15 issued by the United States Department of the Interior.

16 (e) “CALFED Bay-Delta Program” or “Bay-Delta Program”
17 means those projects, programs, commitments, and other actions
18 that address the goals and objectives of the CALFED Bay-Delta
19 Program Record of Decision, dated August 28, 2000, or as it may
20 be amended.

21 (f) “Category A programs” means those state and federal
22 agency programs and funds that are to be managed and
23 implemented consistent with the CALFED Bay-Delta Program’s
24 goals and objectives.

25 (g) “Director” means the Director of the California Bay-Delta
26 Authority.

27 (h) “Implementing agencies” means those agencies with the
28 primary responsibility for implementing the program elements,
29 subject to Sections 79440 and 79441.

30 (i) “Program elements” are categories in which agency
31 programs are grouped for management and planning purposes.
32 The CALFED Bay-Delta Program consists of the following 11
33 program elements:

34 (1) Levee system integrity.

35 (2) Water quality.

36 (3) Water supply reliability.

37 (4) Ecosystem restoration.

38 (5) Water use efficiency.

39 (6) Water transfer.

40 (7) Watershed.

1 (8) Storage.

2 (9) Conveyance.

3 (10) Science.

4 (11) Environmental water account.

5 (j) "Program plan" means the plans prepared annually by the
6 implementing agencies that include annual and multiyear
7 accomplishments, major activities, ~~cross-program~~ *cross-program*
8 integration, schedules, annual budgets, and multiyear expenditure
9 plans.

10 (k) "Projects" means both programs and capital projects.

11 SEC. 3. Section 79403.5 of the Water Code is amended to
12 read:

13 79403.5. (a) The authority and the state implementing
14 agencies shall carry out the programs, projects, and activities
15 necessary to implement the Bay Delta Program in accordance
16 with Section 79441. The authority shall coordinate the activities
17 of the state and federal implementing agencies to promote
18 balanced implementation that meets the goals and objectives of
19 the Bay Delta Program.

20 (b) State agencies, whenever feasible, shall carry out their
21 authority and responsibilities in a manner that is consistent with
22 the goals of the Bay Delta Program to promote cooperative and
23 coordinated actions and programs that result in balanced
24 solutions to bay delta problems.

25 (c) Nothing in this division shall be construed to restrict or
26 override constitutional, statutory, regulatory, or adjudicatory
27 authority or public trust responsibilities of any federally
28 recognized Indian tribe, or any local, state, or federal agency, or
29 to restrict or override authority or responsibility of state, federal,
30 or local water project operations under applicable law and
31 contracts. This division does not abrogate or modify state laws
32 with respect to responsibilities to the State Water Project
33 bondholders and shall be implemented in a manner consistent
34 with Sections 10505 and 10505.5, Article 3 (commencing with
35 Section 11460) of Chapter 3 of Part 3 of Division 6, and Chapter
36 1 (commencing with Section 12200) of Part 4.5 of Division 6.

37 (d) State agencies shall cooperate with federal agencies to
38 meet the goals and objectives of the program. However, nothing
39 in this division shall be construed to give any federal agency or

1 official the authority to modify, halt, or otherwise restrict the
2 discretion of any state agency.

3 SEC. 4. Section 79406 of the Water Code is repealed.

4 SEC. 5. Section 79412 of the Water Code is amended to read:

5 79412. (a) The authority shall be governed by a board, which
6 shall include representatives from six state agencies and six
7 federal agencies if those identified federal agencies are
8 authorized to participate, eight public members, including, but
9 not limited to, one member of the Bay-Delta Public Advisory
10 Committee, and four nonvoting, ex officio members, as follows:

11 (1) The Secretary of the Resources Agency.

12 (2) The Secretary of the California Environmental Protection
13 Agency.

14 (3) The Director of Water Resources.

15 (4) The Director of Fish and Game.

16 (5) The State Director of Health Services.

17 (6) The Secretary of the Department of Food and Agriculture.

18 (7) The Secretary of the Interior.

19 (8) The Regional Administrator of Region IX of the United
20 States Environmental Protection Agency.

21 (9) The Operations Manager of the California/Nevada
22 Operations Office of the United States Fish and Wildlife Service.

23 (10) The Regional Director of the United States Mid-Pacific
24 Region of the Bureau of Reclamation.

25 (11) The District Engineer of the United States Sacramento
26 District of the Army Corps of Engineers.

27 (12) The Regional Administrator of the Southwest Region of
28 the United States National Marine Fisheries Service.

29 (13) One public member from the Sacramento and San
30 Joaquin River Delta Region.

31 (14) One public member from the San Francisco Bay Region.

32 (15) One public member from the Sacramento Valley Region.

33 (16) One public member from the San Joaquin Valley Region.

34 (17) One public member from the southern California region.

35 (18) One public member from the Bay-Delta Public Advisory
36 Committee.

37 (19) ~~Two at-large public members~~ *public members-at-large*.

38 (20) The Chairperson and Vice Chairperson of the Assembly
39 Water, Parks and Wildlife Committee, or its successor, as
40 nonvoting, ex officio members.

1 (21) The Chairperson and Vice Chairperson of the Senate
2 Agriculture and Water Resources Committee, or its successor, as
3 nonvoting, ex officio members.

4 (b) The five public members subject to regional requirements
5 shall be appointed by the Governor, in consultation with the
6 Secretary of the Interior, and with the advice and consent of the
7 State Senate.

8 (c) One at-large public member shall be appointed by the
9 President pro Tempore of the Senate in consultation with the
10 Secretary of the Interior.

11 (d) One at-large public member shall be appointed by the
12 Speaker of the Assembly in consultation with the Secretary of the
13 Interior.

14 (e)(1) For the purposes of being eligible to serve on the
15 board, a public member described in any of the paragraphs (13)
16 to (17), inclusive, of subdivision (a) shall be required to live in
17 the region he or she represents.

18 (2) A public member shall have substantial training, expertise,
19 and knowledge as follows:

20 (A) With regard to at least one of the following areas:
21 ecosystem restoration, levees, water supply, or water quality.

22 (B) With regard to labor, Native American matters, local
23 government, the environment, or business if that public member
24 meets the requirements of subparagraph (A).

25 (f) The public members, as a group, shall reflect a broad range
26 of the experience and knowledge described in subdivision (e).

27 (g) The representative of the Bay-Delta Public Advisory
28 Committee shall be selected by a majority vote of all the
29 members of that committee.

30 (h) A member of the authority described in any of the
31 paragraphs (1) to (12), inclusive, of subdivision (a) may
32 designate, in writing, a deputy director of that member's agency,
33 or a person occupying an equivalent classification, to act in the
34 place of that member if that member is absent.

35 (i) The federal representatives described in paragraphs (7) to
36 (12), inclusive, of subdivision (a) may participate as nonvoting,
37 *ex officio* members.

38 SEC. 6. Section 79415 of the Water Code is amended to read:

39 79415. (a) Except as provided in subdivision (b), a public
40 member of the authority shall hold office for a term of four years,

1 and notwithstanding Section 1774 of the Government Code, a
2 public member shall continue to serve, upon expiration of his or
3 her term until a successor is appointed.

4 (b) In the case of the public members initially appointed by the
5 Governor, two members shall be appointed to serve until January
6 1, 2004, and three members until January 1, 2006.

7 (c) The Governor, in consultation with the Secretary of the
8 Interior, shall appoint one of the authority members as a
9 chairperson who shall preside at all meetings, and a vice
10 chairperson who shall preside in the absence of the chairperson.

11 (d) For the purposes of conducting the authority's business, a
12 quorum of 11 voting members of the board of the authority shall
13 be present, which shall include at least three public members.
14 Members listed in paragraphs (1) to (19), inclusive, of
15 subdivision (a) of Section 79412 may be counted towards the
16 establishment of a quorum. All actions approved by the authority
17 shall require an affirmative vote of a majority of the authority
18 members eligible to vote.

19 (e) The authority may form committees, and the committees
20 may make recommendations to the full authority.

21 (f) Each public member of the authority shall receive
22 compensation in the amount of one hundred dollars (\$100) per
23 day, not to exceed eight hundred dollars (\$800) per month, for
24 conducting any authority business authorized by the authority,
25 upon the approval of the compensation by a majority of the
26 authority members by a recorded vote. A public member may
27 also receive reimbursement for the necessary expenses incurred
28 by the member in the performance of the member's duties.

29 SEC. 7. Section 79420 of the Water Code, as added by
30 Section 2 of Chapter 812 of the Statutes of 2002, is repealed.

31 SEC. 8. Section 79420 of the Water Code, as added by
32 Chapter 955 of the Statutes of 2002, is amended to read:

33 79420. The authority may exercise all of the following
34 powers:

35 (a) Sue or be sued.

36 (b) Delegate administrative functions to the staff of the
37 authority.

38 (c) Request reports from state, federal, and local government
39 agencies on issues related to the implementation of the CALFED
40 Bay Delta Program.

1 (d) Receive funds, including funds from private and local
2 ~~government~~ *governmental* sources, and contributions from public
3 and private sources, as well as state and federal appropriations.

4 (e) Enter into contracts consistent with existing contracting
5 practices of the Department of General Services, if the director
6 has the authority for final approval of contracts of five hundred
7 thousand dollars (\$500,000) or below.

8 (f) Enter into cooperative agreements with individuals,
9 associations, private entities, boards of supervisors, and with
10 state or federal departments, divisions, bureaus, boards, or
11 commissions for the purpose of carrying out the CALFED
12 Bay Delta Program.

13 (g) Disburse funds through grants, public assistance, loans,
14 and contracts to entities, including federally recognized Indian
15 tribes, within the Bay Delta Program regions, as described in
16 subdivision (e) of Section 79401, to carry out the Bay Delta
17 Program goals and objectives. Grant awards shall be made by the
18 authority on a competitive or alternative basis established by the
19 authority, consistent with applicable bond law. Procedures,
20 forms, and guidelines adopted or established for these grant
21 programs, including the application process, are not subject to
22 Chapter 3.5 (commencing with Section 11340) of Part 1 of
23 Division 3 of Title 2 of the Government Code. Consistent with
24 Section 10295 of the Public Contract Code and Section 4.06 of
25 the State Contracting Manual, grant funding agreements are not
26 subject to approval of the Department of General Services.

27 (h) Employ the services of other public, nonprofit, or private
28 entities.

29 (i) Employ its own legal staff or contract with other state or
30 federal agencies for legal services, or both. The authority may
31 employ special legal counsel with the approval of the Attorney
32 General.

33 (j) Adopt regulations as needed for the implementation of this
34 division. A federal representative may decline to participate in
35 actions described in this subdivision if he or she identifies a
36 constitutional or statutory limitation on that participation. The
37 authority granted by this paragraph does not extend to the
38 adoption of regulations to implement the program elements
39 described in subdivisions (a) to (f), inclusive, and subdivision (h)
40 of Section 79441.

1 (k) Obtain and hold regulatory permits and prepare
2 environmental documents.

3 (l) Pursuant to Section 78684.8, the authority is hereby
4 designated the successor to the Secretary of the Resources
5 Agency for the purpose of carrying out the balancing and related
6 procedures established pursuant to Section 78684.12.

7 SEC. 9. Section 79421 of the Water Code is amended to read:
8 79421. The authority shall carry out the following duties:

9 (a) Develop policies and make decisions at program
10 milestones, and provide direction to achieve balanced
11 implementation, integration, and continuous improvement in all
12 program elements.

13 (b) Track the progress of all program projects and activities
14 and assess overall achievement of the goals and objectives of the
15 CALFED Bay-Delta Program.

16 (c) Modify, as needed, the CALFED Bay-Delta Program's
17 timelines and activities where the authority deems it necessary to
18 ensure that the program meets its overall goals and objectives.
19 Modification shall be coordinated with implementing agencies
20 and other affected agencies with public input. The authority shall
21 notify the appropriate policy and fiscal committees of the
22 Legislature with regard to any modifications made by the
23 authority.

24 (d) Communicate with the Congress of the United States and
25 the Legislature on program progress, answer legislative inquiries,
26 review and respond to legislative proposals, and review and
27 submit legislative proposals.

28 (e) On or before November 15 of each year, review progress in
29 implementing the program.

30 (f) On or before February 15 of each year, in coordination with
31 the Secretary of the Interior, submit a report to the Governor, the
32 Secretary of the Interior, the Legislature, and the Congress of the
33 United States that describes the status of implementation of all
34 program elements for the prior fiscal year, and includes any
35 written determination and revised schedule required under
36 subdivision (g).

37 (g) If, at the conclusion of each annual review required by
38 subdivision (e), or, if a timely annual review has not been issued,
39 the authority or the Governor, in consultation with the Secretary
40 of the Interior, determines, in writing, that either the CALFED

1 Bay-Delta Program implementation schedule has not been
2 substantially adhered to, or that balanced progress in achieving
3 the goals and objectives of the CALFED Bay-Delta Program is
4 not occurring, the authority, or the Governor, in coordination
5 with the Bay-Delta Public Advisory Committee, shall, and the
6 Secretary of the Interior may, prepare a revised schedule that will
7 achieve balanced progress in all program elements consistent
8 with the intent of the CALFED Bay-Delta Program and
9 applicable regulatory requirements.

10 (h) To support annual implementation, the director shall
11 prepare and submit to the Department of Finance an annual state
12 proposed budget, prepared consistent with Section 79423, for
13 each of the state-implementing agencies and their corresponding
14 program elements, including, but not limited to, the authority's
15 oversight and coordination duties, in accordance with the annual
16 State Budget process.

17 (i) Coordinate with federal agencies to develop a proposed
18 federal budget to support the CALFED Bay-Delta Program that
19 the federal agencies can submit to the President of the United
20 States in accordance with the annual federal budget process.

21 (j) Manage the science program element.

22 (k) Coordinate, and when appropriate, assist with the
23 integration of, the CALFED Bay-Delta Program with other
24 related programs to maximize available resources and reduce
25 conflicts and inconsistencies with other programs.

26 (l) Provide a forum for the resolution of conflicts or disputes
27 among implementing agencies relating to the program.

28 (m) Seek out and promote partnerships with local interests and
29 programs that seek to integrate various water management
30 options, and cooperate and undertake joint activities with other
31 persons, including local entities, Indian tribes, water users, and
32 landowners. These activities shall include, but are not limited to,
33 planning, design, technical assistance, construction projects, and
34 development of an independent science program.

35 (n) Develop, in cooperation with federal agencies, a regulatory
36 coordination and streamlining process for the issuance of permits
37 and approvals required under state and federal law as necessary,
38 to achieve the program's goals and objectives that reduces or
39 eliminates duplicative process.

1 (o) Adopt criteria for review, approval, and modification of
2 program plans pursuant to subdivision (i) of Section 79423.

3 (p) Meet jointly with the Bay-Delta Public Advisory
4 Committee at least once annually.

5 (q) Review, and comment to the appropriate implementing
6 agency or agencies with regard to regulations, guidelines,
7 criteria, and awards proposed by the implementing agency or
8 agencies to carry out a grant program for projects and activities
9 located within the CALFED solution area, that wholly or
10 partially assist in the fulfillment of one or more of the goals of
11 the CALFED Bay-Delta Program. That review and comment
12 shall be for purposes of determining consistency with the
13 CALFED Record of Decision. To avoid delays in project awards,
14 the opportunity for review by the authority shall be incorporated
15 into the grant program schedules established by the
16 implementing agencies.

17 SEC. 10. Section 79422 of the Water Code is repealed.

18 SEC. 11. Section 79423 of the Water Code, as added by
19 Section 2 of Chapter 812 of the Statutes of 2002, is repealed.

20 SEC. 12. Section 79423 of the Water Code, as added by
21 Section 2 of Chapter 955 of the Statutes of 2002, is amended to
22 read:

23 79423. (a) The implementing agencies shall annually submit
24 to the director their annual program plan and proposed budget for
25 the following budget year describing how each implementing
26 agency proposes to implement their respective program elements
27 during the following budget year. The director shall then submit
28 a comprehensive budget proposal to the Secretary of the
29 Resources Agency for consideration consistent with the existing
30 budget development process. Individual departmental budget
31 requests submitted to the director are not subject to disclosure
32 under the Public Records Act (Chapter 3.5 (commencing with
33 Section 6250) of Division 7 of Title 1 of the Government Code),
34 and, notwithstanding Section 79414, discussions regarding those
35 requests are exempt from the Bagley-Keene Open Meeting Act
36 (Article 9 (commencing with Section 11120) of Chapter 1 of Part
37 1 of Division 3 of Title 2 of the Government Code). These
38 programs shall also address environmental justice concerns and
39 assess the impacts of projects and activities on tribal trust
40 resources and tribal governmental concerns.

1 (b) Each program plan shall include programs that are
2 designated as Category A programs in Attachment 3, entitled
3 “Implementation Memorandum of Understanding” of the
4 CALFED Bay-Delta Program Record of Decision, dated August
5 28, 2000, or as it may be amended.

6 (c) Annually, the authority shall consult with the agencies
7 identified in subdivision (f) of Section 79401 and the Bay-Delta
8 Public Advisory Committee, and shall determine, with the
9 concurrence of the implementing agencies, those changes that
10 shall be made to the list of Category A programs.

11 (d) Each program plan shall include program priorities, work
12 plans, proposed budgets, and significant program products,
13 including, but not limited to, regulations, grant or loan
14 solicitations, schedules for production of environmental
15 documents, and project selection processes.

16 (e) Program plans also shall include a strategy and proposed
17 budget for addressing program-specific, critical scientific
18 uncertainties, developing and implementing performance
19 measures, evaluating program actions, developing strategies for
20 incorporating tribal and environmental justice interests, and
21 conducting scientific review of program implementation and
22 proposed projects. The implementing agency and the director
23 shall consult with the lead scientist, as appropriate, to determine
24 an appropriate science strategy and proposed budget.

25 (f) The implementing agencies shall develop comprehensive
26 tribal and environmental justice work plans, including specific
27 goals and objectives and projected expenditures that address all
28 program areas.

29 (g) The implementing agencies shall coordinate the
30 preparation of program plans with agencies participating in the
31 CALFED Bay-Delta Program, federally recognized Indian tribes,
32 and other appropriate agencies.

33 (h) The implementing agencies and the director shall seek to
34 integrate the program plans for the program elements into a
35 comprehensive and balanced annual implementation plan.

36 (i) Annually, the authority shall review and approve, and, as
37 appropriate, may recommend that implementing agencies
38 modify, program plans on behalf of Category A programs, based
39 on the following criteria:

40 (1) Consistency with the program.

1 (2) The balanced achievement of the program's goals and
2 objectives.

3 (3) Other criteria adopted pursuant to subdivision (o) of
4 Section 79421.

5 (j) If the authority does not approve an implementing agency's
6 program plan, the authority shall prepare and submit written
7 findings to the appropriate policy and fiscal committees of the
8 Legislature and the implementing agencies, describing how *the*
9 program plan does not meet the criteria described in subdivision
10 (i).

11 (k) If the authority recommends modification to a program
12 plan, the implementing agency shall resubmit the program plan,
13 as appropriate, to the authority for approval. If an implementing
14 agency makes any of the modifications recommended by the
15 authority, the authority shall submit these modifications to the
16 Legislature.

17 (l) Nothing in this division limits or interferes with the final
18 decisionmaking authority of the implementing agencies.

19 SEC. 13. Section 79440 of the Water Code is amended to
20 read:

21 79440. For the purposes of this division, "implementing
22 agency" includes those state agencies identified in Section
23 79441. It is anticipated that federal agencies and officials,
24 including federal agencies designated as implementing agencies
25 in Section 79441, shall participate in the CALFED Bay-Delta
26 Program and cooperate with the state agencies; however, state
27 agencies shall comply with this division regardless of whether,
28 and to what extent, federal agencies and officials do so.

29 SEC. 14. Section 79450 of the Water Code is amended to
30 read:

31 79450. The Governor, in consultation with the Secretary of
32 the Interior, shall appoint a director and a chief counsel who shall
33 serve at the pleasure of the authority.

34 SEC. 15. Section 79452 of the Water Code is amended to
35 read:

36 79452. (a) The authority, with the advice of the director,
37 shall appoint a lead scientist. The lead scientist shall report to the
38 authority. The lead scientist, in cooperation with the
39 implementing agencies, shall be responsible for the development
40 of the science program element.

1 (b) The lead scientist shall meet the following requirements:

2 (1) Has undertaken substantial scientific research work in any
3 field related to one or more of the program elements.

4 (2) Has experience managing environmental issues or advising
5 high level managers in methods for promoting science based
6 decisionmaking in the areas of water management and ecosystem
7 restoration.

8 (3) Has a record of publication in ~~peer reviewed~~ *peer-reviewed*
9 scientific literature.

10 (c) For all program elements, the lead scientist shall ensure
11 scientific application of adaptive management, monitoring, and
12 investigations to reduce uncertainties, and full investigation of
13 the effects of each program element on other program elements.

14 (d) The lead scientist shall ensure that peer review is employed
15 extensively and prudently to ensure the quality of program
16 planning, implementation, and evaluation. The lead scientist may
17 directly or indirectly contract for scientific experts without
18 competitive bidding.

19 (e) The purpose of the science program element shall be to
20 carry out all of the following functions:

21 (1) Provide implementing agencies and the authority with
22 authoritative and unbiased reviews of the state of scientific
23 knowledge relevant to management and decisionmaking for the
24 CALFED Bay Delta Program.

25 (2) Implement programs and projects to articulate, test, refine,
26 and improve the scientific understanding of all aspects of the
27 bay delta and its watershed areas.

28 (3) Provide a comprehensive framework to integrate, monitor,
29 and evaluate the use of adaptive management and the best
30 available scientific understandings and practices for
31 implementing the CALFED Bay Delta Program.

32 (4) Independently review the technical and scientific
33 performance of the CALFED Bay Delta Program, including, but
34 not limited to, all of the following:

35 (A) Conclusions.

36 (B) Studies, monitoring, performance measures.

37 (C) Data analyses.

38 (D) Scientific practices that form the scientific bases for
39 program decisionmaking.

1 SEC. 16. Section 79453 of the Water Code, as added by
2 Section 2 of Chapter 812 of the Statutes of 2002, is repealed.

3 SEC. 17. Section 79453 of the Water Code, as added by
4 Section 3 of Chapter 955 of the Statutes of 2002, is amended to
5 read:

6 79453. The director may do all of the following, consistent
7 with applicable state regulations:

8 (a) Appoint and hire staff as necessary to administer the affairs
9 of the authority at a salary and classification level commensurate
10 with other state and federal agencies.

11 (b) Establish or change classification levels.

12 (c) Hire limited term employees for up to four years.

13 (d) Conduct exams, change pay ranges, discipline, demote, or
14 separate.

15 (e) Use examination lists from other state agencies as
16 mandatory appropriate lists.

17 SEC. 18. Section 79455 of the Water Code, as added by
18 Section 2 of Chapter 812 of the Statutes of 2002, is repealed.

19 SEC. 19. Section 79455 of the Water Code, as added by
20 Section 4 of Chapter 955 of the Statutes of 2002, is amended to
21 read:

22 79455. Notwithstanding any other provision of law, and only
23 for the purposes of this division, the authority may hire members
24 of federally recognized Indian tribes and nonprofit organizations
25 in accordance with the interjurisdictional employee exchange
26 program described in Section 427 of Title 2 of the California
27 Code of Regulations without approval by the Department of
28 General Services.

29 SEC. 20. Section 79460 of the Water Code is amended to
30 read:

31 79460. (a) The authority shall provide administrative support
32 for the Bay Delta Public Advisory Committee.

33 (b) The authority shall take any administrative actions
34 necessary to maintain the Bay Delta Public Advisory
35 Committee's status as an advisory committee under the Federal
36 Advisory Committee Act (P.L. 92-463, as amended). The
37 Bay Delta Public Advisory Committee may be treated as a state
38 advisory committee.

39 (c) The authority shall provide assistance to the Governor and
40 Secretary of the Interior to ensure that the candidates for

1 appointment to the Bay-Delta Public Advisory Committee are
2 representatives of federally recognized Indian tribes or
3 “stakeholder” groups, reflect a geographic diversity and diversity
4 of interests affected by the health of the bay-delta, and have
5 expertise in the relevant fields as specified in the committee’s
6 federal charter. Appointment shall be made to ensure that the
7 committee as a whole is both balanced and diverse.

8 (d)(1) The Bay-Delta Public Advisory Committee shall
9 advise and make recommendations to the authority and director
10 on issues related to the CALFED Bay-Delta Program and any of
11 the processes, projects, or programs required by this division.

12 (2) Section 1090 of the Government Code does not apply to
13 members of the Bay-Delta Public Advisory Committee or its
14 subcommittees when they are advising and making
15 recommendations to the authority and director on proposed grant
16 solicitation packages, including guidelines and criteria. Further,
17 with regard to any advice from a member, the Legislature finds
18 that the particular stakeholder organization represented by the
19 member is tantamount to, and constitutes, the “public generally”
20 within the meaning of Section 87103 of the Government Code.

21 (e) The members of the Bay-Delta Public Advisory Committee
22 may receive reimbursement for necessary travel expenses
23 incurred by the members in the performance of the members’
24 duties, consistent with state per diem rates.

25 SEC. 21. Section 79472 is added to the Water Code, to read:

26 79472. (a) The Legislature finds and declares that it is in the
27 public interest for the implementing agencies and the authority to
28 receive the best possible scientific advice from scientists
29 knowledgeable about current research, unknowns, and issues
30 facing the Bay-Delta system. It is also in the public interest for
31 scientific experts to compete for research funding in areas that
32 would assist the authority.

33 (b) The lead scientist and the director are responsible for
34 preparing and recommending to the authority for approval, grant
35 solicitation packages, and proposed grant funding for scientific
36 projects and research on topics affecting the Bay-Delta system,
37 and they may seek assistance and review from scientific experts
38 in the development of scientific programs, performance
39 measures, research questions and other scientific issues.

1 (c) A member of the Independent Science Board or other
2 science advisory panel, or an independent scientific expert who
3 assists an implementing agency or the authority shall not be
4 deemed for purposes of Sections 1090 or 87100 of the
5 Government Code to have participated in the making of a
6 contract that results from a competitive process to fund scientific
7 research unless the scientific expert participated directly in the
8 preparation of the grant solicitation package or the selection of
9 projects to be funded.

10 SEC. 22. Section 79473 is added to the Water Code, to read:

11 79473. (a) Neither the Independent Science Board, nor any
12 other independent science panel established to assist the
13 implementing agencies and the authority, shall be subject to the
14 requirements of Article 9 (commencing with Section 11120) of
15 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
16 Code.

17 (b) Notwithstanding subdivision (a), the board or panel, in
18 conducting its business, shall do all of the following:

19 (1) Determine and provide 10 day advance public notice of
20 meetings that will be open to the public.

21 (2) Ensure that meetings to gather data from individuals who
22 are not members of the board or panel are open to the public, and
23 make available to the public written materials presented to the
24 board or panel by those individuals, unless exempted by law.

25 (3) Make available to the public as soon as practicable, a brief
26 summary of any meeting that is not an open meeting. Generally,
27 meetings will be closed when the board or panel is deliberating
28 on, or discussing the content, findings, or recommendations
29 regarding a particular issue or report. The meeting summary shall
30 identify the members present, the topics discussed, materials
31 made available to members, and such other matters that the board
32 or panel determines should be included.

33 (4) Make available to the public any final report or written
34 recommendation, including the names of the principal reviewers
35 who reviewed the report or written recommendation and who are
36 not members of the board or panel. Draft documents prepared by
37 the board or panel are not subject to disclosure under Chapter 3.5
38 (commencing with Section 6250) of Division 7 of Title 1 of the
39 Government Code.

1 SEC. 23. Section 79475 of the Water Code is amended to
2 read:

3 79475. This division shall remain in effect only until January
4 1, 2010, and as of that date is repealed, unless the Secretary of
5 the Resources Agency determines that federal legislation has
6 been enacted authorizing the participation of appropriate federal
7 agencies in the authority. Upon making that determination, the
8 Secretary of the Resources Agency shall notify, in writing, the
9 Secretary of State with regard to that determination.

10 SEC. 24. The Legislature finds and declares, in accordance
11 with paragraph (2) of subdivision (b) of Section 3 of Article 1 of
12 the State Constitution, the following with regard to the enactment
13 of Section 22 of this act:

14 (a) The CALFED Independent Science Board (ISB) is
15 comprised of a group of diverse, nationally renowned scientists
16 that meet only periodically. Additional independent science
17 panels established to provide scientific advice on individual
18 program elements are similarly constituted. The statutory charge
19 of the ISB and additional science panels is to provide
20 independent scientific advice to the California Bay-Delta
21 Authority, the Bay-Delta Public Advisory Committee, and the
22 CALFED implementing agencies.

23 (b) The participating scientists are accustomed to working on
24 national scientific advisory panels, such as those convened by the
25 National Academy of Sciences, which are exempt, with certain
26 exceptions, from the open meeting requirements of the Federal
27 Advisory Committee Act; and that those federal exemptions
28 allow the scientists to conduct candid and rigorous deliberations
29 and peer review without potential political influence, while still
30 requiring accountability and transparency with respect to final
31 recommendations, advice, and reports.

32 (c) To ensure the independence and scientific quality of the
33 work and advice from the ISB and additional independent
34 science panels, and to continue to attract the best scientists in the
35 country, an exemption from the Bagley-Keene Open Meeting Act
36 (Article 9 (commencing with Section 11120) of Chapter 1 of Part
37 1 of Division 3 of Title 2 of the Government Code) is
38 appropriate, but with public accountability requirements modeled
39 after the exemption in federal law under which the participating
40 scientists are accustomed to operating.

1 ~~SEC. 25. This act is an urgency statute necessary for the~~
2 ~~immediate preservation of the public peace, health, or safety~~
3 ~~within the meaning of Article IV of the Constitution and shall go~~
4 ~~into immediate effect. The facts constituting the necessity are:~~
5 ~~In order to ensure continued collaboration among the state and~~
6 ~~federal CALFED implementing agencies and the coordinated~~
7 ~~participation of those agencies on the California Bay-Delta~~
8 ~~Authority in overseeing the CALFED Bay-Delta Program, it is~~
9 ~~necessary to conform, at the earliest possible time, the California~~
10 ~~Bay-Delta Authority Act (Div. 26.4 (commencing with Section~~
11 ~~79400) of the Water Code) to the recently enacted federal~~
12 ~~CALFED Bay-Delta Authorization Act (P.L.108-361), to take~~
13 ~~effect immediately.~~