THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

BOARD ACTION

- Board of Directors
  Communications and Legislation Committee

4/9/2019 Board Meeting

8-7

Subject

Express opposition, unless amended, to SB 1 (Atkins, D-San Diego; Portantino, D-La Canada Flintridge; and Stern, D-Agoura Hills): California Environmental, Public Health, and Workers Defense Act of 2019; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

SB 1 is intended to prevent weakening of environmental and worker safety standards in California that may result from any weakening of federal law during the tenure of the Trump Administration. However, SB 1 is unnecessary given existing legal, legislative and administrative remedies available in California to address weakening of any specific standard, and it may have significant unintended consequences in several policy areas relevant to Metropolitan. Staff recommends opposing SB 1 unless it is amended to remove specific provisions of concern.

Details

Background

SB 1 (**Attachment 1**) was introduced by Senators Atkins, Portantino and Stern on December 3, 2018. It resembles SB 49 introduced in December 2016 by former State Senator Kevin De León (D-Los Angeles) and Senator Henry Stern (D-Agoura Hills) shortly after President Trump was elected. In August 2017, staff presented a proposed action authorizing the General Manager to take an oppose-unless-amended position on SB 49. The Board opted instead to "watch" the bill and directed staff to seek amendments and bring the bill back to the Board for further consideration in September 2017. Ultimately, SB 49 was held by the Assembly Rules Committee and did not move forward to the Governor.

Summary of SB 1

The overarching objective of SB 1 is to authorize state agencies to immediately adopt any or, under certain circumstances, all baseline federal standards that are weakened so that federal environmental, safe drinking water, fair labor or worker safety protections remain in effect as they existed before the Trump Administration took office. The bill would sunset on January 20, 2025, and would be repealed on January 1, 2026.

Baseline Federal Standards for Environmental Protection, Labor Practices, and Worker Safety

SB 1 defines baseline federal standards as those federal clean air, clean water, safe drinking water, endangered species, fair labor and worker safety laws and regulations in effect immediately before the Trump Administration took office, either as of January 1, 2017 (labor and worker safety) or January 19, 2017 (all others). For endangered species, it goes beyond statutes and regulations, and includes any incidental take permits or biological opinions, including the biological opinions governing the coordinated operations of the State Water Project (SWP) and Central Valley Project (CVP) as they existed on January 19, 2017.

Quarterly Reporting and Adoption Requirements

Regarding air, water, fair labor, and worker safety, SB 1 would require state agencies to monitor and report quarterly on any changes at the federal level they determine render any baseline standard "less stringent than" the baseline under the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Fair Labor Standards Act of 1938,

Occupational Safety and Health Act of 1970, and the Federal Coal Mine Health and Safety Act of 1969. At that point, the agency may adopt the federal baseline as a state standard with only one 30-day opportunity for public notice and comment. The state agency may adopt the baseline standard either as an emergency regulation valid through January 20, 2021, or the agency may adopt the baseline standard as a non-emergency regulation with no expiration date, and without the usual notice-and-comment procedures required in state law.

Citizen Suit Provisions

The bill would also create new "citizen suit" causes of action under state law, allowing any citizen to file litigation to enforce any baseline federal standards adopted as state standards under SB 1, so long as they give 60-days prior notice, and the state is not already diligently prosecuting an enforcement action. The citizen suit provisions would allow citizens to bypass any otherwise applicable requirement to exhaust administrative remedies by petitioning or filing a complaint with the relevant state agencies. Under current law, before an action to enforce a state standard can be properly brought in state court, would-be plaintiffs must first exhaust administrative remedies, meaning they must first petition the relevant regional or state agency to investigate and initiate enforcement proceedings. Those agencies have the expertise, resource, and discretion to investigate alleged violations, impose penalties and craft remedial measures, as needed. There is no evidence that new state-citizen suit provisions will increase regulatory enforcement or compliance, rather they could result in costly and protracted litigation.

Additionally, if Congress amends the federal statutes listed above to repeal or add conditions to citizen suits, the state agencies may adopt all the federal baseline standards at once.

Baseline Endangered Species Act Permits, Biological Opinions and Incidental Take Statements Would Become Floors for Future State Permits

The provisions regarding the federal Endangered Species Act (ESA) are different from the provisions regarding air, water, fair labor, and worker safety. Under SB 1, baseline federal standards not only include the ESA and implementing regulations, but also individual permits, biological opinions, and incidental take statements as they existed as of January 19, 2017. The baseline federal standards for air, water, fair labor, and worker safety do not include standards in individual permits.

Under the species provisions, the California Department of Fish and Wildlife (DFW) would have to adopt standards "at least as stringent as" those in the baseline federal standards in any federal incidental take permit, biological opinion, or incidental take statement in any new or amended state authorizations it issues, regardless whether there are any changes in the federal permits. This would freeze in place federal permit terms, even if improved scientific understanding shows they are ineffective or unnecessary.

Authorization to Expedite Federal Listings Under CESA Could Result in CESA Liability if State Permits Are Not Issued Concurrently

Under SB 1, if a federally-listed species that is not state-listed is delisted or downlisted from endangered to threatened, or if the ESA or any of its regulations are changed "in any way," the Fish and Game Commission "shall" list the species under the California Endangered Species Act (CESA) within three months or two regularly scheduled meetings of the change, whichever comes first, unless the Commission determines that CESA listing is not warranted, or if it receives and concurs with a recommendation from DFW to use the codified listing procedures instead. In addition, as soon as the ESA or any of its many implementing regulations are amended in any way that would result in "a change in the legally protected status" of federally-listed species, the Commission must list <u>every</u> federally-listed species not already listed under CESA, unless it determines listing is not warranted. Thus, it is conceivable that SB 1 could cause one or more mass listings of species under CESA. This rapid listing precludes meaningful public comment, and bypasses important substantive listing requirements, including the requirement that the listing be based on best available science.

While DFW would have discretion under SB 1 to adopt federal permits as state permits for such newly listed species, to the extent it did not do so, it could cause a major backlog of new permit applications from federal permittees, such as Metropolitan, seeking state permits for incidental take of the newly listed species. Such a lag in issuance of state permits could expose federal permittees to state civil and criminal liability even though they continue to comply with their federal ESA authorizations.

California Already Has Authority to Adopt Standards at Least as Stringent as Federal Standards

SB 1 is unnecessary because the Legislature and state agencies currently have the authority to adopt, and in most cases already have adopted state standards at least as protective as the federal baseline standards. The Legislature has authority to adopt urgency bills, and state agencies have authority to adopt emergency regulations as needed if a federal baseline standard is weakened, and there is no state standard already in place. Where there is no evidence of an emergency, the Legislature and state agencies can adopt new standards through the usual policy-making procedures, including at the agency level various notice-and-comment and evidentiary procedures.

Constitutional Limitation

SB 1 will likely face constitutional challenges under the single-subject provision of the California Constitution. Under section 9 of article IV of the California Constitution, a statute cannot embrace more than one subject, which must be expressed in its title. The California Supreme Court has held that the Legislature cannot evade this constitutional limitation by using an excessively general title where the provisions of the bill were neither functionally related nor germane to one another. (*Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1100-1101.)

Concerns with SB 1 Which May Impact Metropolitan:

- **Potential impacts to SWP operations** - Freezing existing federal biological opinion measures in new or future state permits would occur regardless of improved scientific understanding that may show the federal baseline measures are ineffective or unnecessary, thus permanently, but needlessly constraining the coordinated operations of the CVP and SWP.

- **Potential operational risks, restrictions, permit delays** - The potential for very rapid new listings of threatened or endangered species under CESA may put Metropolitan at risk of civil or criminal penalties or injunctions if it cannot get state permits simultaneous with new listings. For instance, Metropolitan has federal authorization for incidental take of coastal California gnatcatcher for construction and maintenance of facilities. If it were rapidly listed under SB 1, but the state does not immediately accept the federal authorization in lieu of a state permit, Metropolitan would have to avoid incidental take entirely, or proceed at risk until it could obtain a state permit. In addition, under SB 1, if Congress amends the citizen suit provision under the federal ESA, the California Fish and Game Commission could simultaneously list dozens of federally-listed species not already state-listed within 90 days. The Department of Fish and Wildlife would likely be overwhelmed with permit applications, and it could take years to clear the resulting backlog at current staffing levels.

- **Limited public review prior to adoption** - The authority or mandate to adopt federal baseline standards would allow state agencies to adopt the standards with as little as 30-days' notice, precluding meaningful public comment. For instance, there are several federal air quality standards for which there is no state analog. If one or more is arguably rendered less stringent by federal action, SB 1 would authorize the California Air Resources Board (CARB) to adopt the federal baseline standards with as little as 30-days' notice.

- **Inconsistencies between federal and state regulations may result in litigation and regulatory uncertainty -** Whether a state standard adopted under SB 1 is at least as "stringent" as a baseline federal standard may cause litigation because reasonable minds can disagree on the question. For example, federal air quality standards have attainment deadlines for various air basins; analogous state standards do not. Does that mean that the baseline federal standards are more stringent than the California standards, so any change in federal attainment dates would authorize CARB to adopt the baseline federal standards? If CARB did not adopt the baseline attainment dates, would its SB 1 standards be less stringent than the federal baselines? These issues may wind up in litigation.

- **Increased exposure to litigation** - While it is unknown how many regulations may be adopted under SB 1, and therefore subject to the citizen suit provision, creating citizen suits under state law could expose Metropolitan to simultaneous litigation in state and federal court for any alleged violation of a standard adopted under SB 1. This would increase litigation costs. The attorneys' fee and expert witness fee provisions would give plaintiffs increased leverage regardless of the merits of their claims. Absent

evidence that administrative agencies are not enforcing the environmental and worker protection laws, this provision is both unnecessary and potentially costly, with no corresponding improvement in enforcement.

Recommendation

Staff recommends Metropolitan take an oppose-unless-amended position, proposing amendments to remove the provisions of concern, and instead require state agencies to review and report on any perceived impacts by federal policy changes that may weaken environmental or worker protections in California. Under such an approach, the Legislature or the appropriate state agency could use existing authorities to adopt and enforce state standards, either as urgency legislation or an emergency regulation, or by the usual legislative or public notice-and-comment procedures.

Policy

By Minute Item 51418, dated December 11, 2018, the Board adopted the State Legislative Priorities and Principles for 2019

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves legislative proposals that do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Public Resources Code Sections 21065, 21083 and Section 15378(b)(1) of the State CEQA Guidelines).

CEQA determination for Option #2:
None required.

Board Options

Option #1

Authorize the General Manager to express opposition, unless amended, to SB 1: California Environmental, Public Health, and Workers Defense Act of 2019.

Fiscal Impact: Unknown. Reduce risks of additional project delay, enforcement, or litigation costs.
Business Analysis: Preserve state regulatory agency discretion under existing environmental, public health, worker rights, and worker safety laws, avoid project delay or financial impacts from increased regulatory uncertainty and burdens, and avoid additional litigation costs.

Option #2

Take no action.

Fiscal Impact: Unknown. Metropolitan may be subject to additional compliance costs, project delays, and enforcement or litigation costs.
Business Analysis: Metropolitan's SWP supplies may be adversely affected in the long run, and Metropolitan could be subject to potential project delay or financial impacts from increased regulatory burdens, and additional litigation costs may be incurred in legal challenges to new state regulations and permitting decisions.

Staff Recommendation

Option #1

3/28/2019

Susan Sims *Date*
Manager, External Affairs

3/29/2019

Jeffrey Kightlinger *Date*
General Manager

Attachment 1 – Senate Bill 1, as introduced 12/03/2018

Ref# ea12666445

SENATE BILL No. 1

Introduced by Senators Atkins, Portantino, and Stern

December 3, 2018

An act to add and repeal Title 24 (commencing with Section 120000) of the Government Code, relating to state prerogative.

LEGISLATIVE COUNSEL'S DIGEST

SB 1, as introduced, 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 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.

(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 authorize a person acting in the public interest to bring an action to enforce certain federal standards and requirements incorporated into certain of the above-mentioned state laws if specified conditions are satisfied.

(3) Existing federal law generally establishes standards for workers' rights and worker safety.

Existing state law generally establishes standards for workers' rights and worker safety.

This bill would require specified agencies to take prescribed actions regarding certain requirements and standards pertaining to worker's rights and worker safety. The bill would authorize a person acting in the public interest to enforce standards and requirements related to worker's rights and worker safety, as provided.

(5) This bill would make its provisions inoperative as of January 20, 2025, and would repeal them as of January 1, 2026.

(6) 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. State-mandated local program: yes.

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

SECTION 1. Title 24 (commencing with Section 120000) is added to the Government Code, to read:

TITLE 24. 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, AND PUBLIC HEALTH

Chapter 1. Findings and Declarations

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

(a) For over four 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.), and the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), along with their implementing regulations and remedies, to protect our state's public health, environment, and natural resources.

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

(c) 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 as they see fit.

(d) It is therefore necessary for the Legislature to enact legislation that will ensure continued protections for the environment, natural resources, and public health in the state even if the federal laws specified in 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 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 and welfare from any actual or potential adverse effect that reasonably may be anticipated to occur from 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) Ensure that economic growth will occur in a manner consistent with the protection of public health and the environment and preservation of existing natural resources.

(e) Ensure that any decision made by a public agency that may adversely impact public health, 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, 2021, 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.

(c) "Federal standards" means federal laws or federal regulations implementing the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) including 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 quarterly, the state board shall publish 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 stringent than the baseline federal standards.

(2) If the state board determines that a change to the federal standards is less stringent than the baseline federal standards, the state board shall consider whether it should adopt the baseline federal standards as a measure in order to maintain the state's protections to be at least as stringent as the baseline federal standards.

(3) The state board shall publish its list, assessment, and consideration for adoption at least 30 days prior to a vote on adoption on its internet Web site 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 contained in state analogue statutes identified in this article. 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) In the event that the citizen suit provision set forth in Section 7604 of Title 42 of the United States Code is amended to restrict, condition, abridge, or repeal the citizen suit provision, the state board may consider the amendment as a change to the federal standards and may adopt the baseline federal standards pursuant to subdivision (c).

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

120042. (a) An action may be brought by a person in the public interest exclusively to enforce baseline federal standards adopted as a measure pursuant to subdivision (c) of Section 120041 if all of the following requirements are met:

(1) At least 60 days prior to initiating the action, a complainant provides a written notice to the Attorney General and the counsel for the state board, a district attorney, county counsel, counsel of the air district, and prosecutor 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, a district attorney, a city attorney, county counsel, counsel of the state board, counsel of an air district, or a prosecutor has not commenced an action or has not been diligently prosecuting the action.

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

(c) 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.

(d) 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, including water quality standards, effluent limitations, and drinking water standards.

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

(a) The board shall regularly assess proposed and final changes to the federal standards.

(b) (1) At least quarterly, the board shall publish 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 stringent than the baseline federal standards.

(2) If the board determines that a change to the federal standards is less stringent than the baseline federal standards, the board shall

consider whether it should adopt the baseline federal standards as a measure in order to maintain the state's protections to be at least as stringent as the baseline federal standards.

(3) The state board shall publish its list, assessment, and consideration for adoption at least 30 days prior to a vote on adoption on its Internet Web site for public comment.

(c) If the board decides to adopt a measure pursuant to subdivision (b), the 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 for water quality control, a water quality control plan, or regulation.

(d) Notwithstanding any other law, the 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 contained in state analogue statutes identified in this article. Nothing in this chapter shall affect the imposition of sanctions under the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(g) (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 restrict, condition, abridge, or repeal the citizen suit provision, the board may consider the amendment as a change to the federal standards and may adopt the baseline federal standards pursuant to subdivision (c).

(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 restrict, condition, abridge, or repeal the citizen suit provision, the board may consider the amendment as a change to the federal standards and may adopt the baseline federal standards pursuant to subdivision (c).

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

120052. (a) An action may be brought by a person in the public interest exclusively to enforce baseline federal standards adopted

as a measure pursuant to subdivision (c) of Section 120051 if all of the following requirements are met:

(1) At least 60 days prior to initiating the action, a complainant provides a written notice to the Attorney General and the counsel for the board, a district attorney, county counsel, counsel of the regional board, and prosecutor 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, a district attorney, a city attorney, county counsel, counsel of the board, counsel of a regional board, or a prosecutor has not commenced an action or has not been diligently prosecuting the action.

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

(c) 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.

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

Article 3. Endangered and Threatened Species

120060. For purposes of this article, "baseline federal standards" means the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) in effect as of January 19, 2017, its implementing regulations, and any incidental take permits, incidental take statements, or biological opinions in effect as of January 19, 2017.

120061. Except as otherwise authorized by state law, the following apply:

(a) To ensure no backsliding as a result of any change to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or its implementing regulations, in the event of the federal delisting of a species that is eligible for protection under the California Endangered Species Act and which is listed as endangered or threatened pursuant to the federal Endangered Species Act of 1973 as of January 1, 2017, or a change in the legally protected status of such a species, including through a change in listing from endangered to threatened, the adoption of

a rule pursuant to Section 4(d) of the federal Endangered Species Act, or any amendment to the federal Endangered Species Act of 1973 or its implementing regulations, or any exemption from the application of the federal Endangered Species Act of 1973 to a federally listed species as of January 1, 2017, the Fish and Game Commission shall determine whether to list, in accordance with subdivision (b), that species under the California Endangered Species Act pursuant to this section.

(b) The Fish and Game Commission shall list the affected species identified in subdivision (a), pursuant to subdivision (c) and without following the regular listing process set forth in Article 2 (commencing with Section 2070) of Chapter 1.5 of Division 3 of the Fish and Game Code, no later than the conclusion of its second regularly scheduled meeting or within three months, whichever is shorter, after the occurrence of the event described in subdivision (a) unless either the Fish and Game Commission determines that listing of the species is not warranted because it does not meet the criteria in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code or its implementing regulations or the Department of Fish and Wildlife recommends that the species undergo the regular listing process. If the Department of Fish and Wildlife makes a recommendation that the species undergo the regular listing process, the Fish and Game Commission shall either accept the recommendation, in which event the Fish and Game Commission shall be deemed to have accepted a petition for listing the species pursuant to paragraph (2) of subdivision (e) of Section 2074.2 of the Fish and Game Code, or reject the recommendation and immediately list the species pursuant to this subdivision.

(c) Notwithstanding any other law or regulation, because a decision by the Fish and Game Commission to list a species without following the regular listing process becomes effective immediately, the Fish and Game Commission shall add that species to the list of endangered or threatened species pursuant to Section 100 of Title 1 of the California Code of Regulations, and the addition of that species to the list shall be deemed to be a change without regulatory effect pursuant to paragraph (6) of subdivision (a) of that section.

(d) (1) Upon the listing of any species under this section, the Fish and Game Commission or the Department of Fish and Wildlife

may authorize the taking of such species as otherwise provided for in the Fish and Game Code. In lieu of authorizing take under the provisions of Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code, the Fish and Game Commission or the Department of Fish and Wildlife may adopt the terms and conditions of any rule promulgated under Section 4(d) of the federal Endangered Species Act, federal incidental take statement, incidental take permit, or biological opinion in effect at the time of the event described in subdivision (a).

(2) The Department of Fish and Wildlife shall ensure that protections remain in place pursuant to regulation, incidental take permit, or consistency determination that are at least as stringent as required by the baseline federal standards, as determined by the Department of Fish and Wildlife.

(3) This subdivision does not prohibit the Department of Fish and Wildlife from establishing conditions that are more stringent than the baseline federal standards.

(e) Any species listed pursuant to this section shall be subject to the provisions in the California Endangered Species Act in the same manner as any other listed species, including those provisions related to a change in listing status or delisting.

(f) For those species that the Fish and Game Commission lists pursuant to subdivision (b), or for which baseline federal standards are retained pursuant to subdivision (d), the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply.

(g) The provisions of the California Endangered Species Act 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. Section 383) and shall apply to the United States Bureau of Reclamation's operation of the federal Central Valley Project.

DIVISION 3. LABOR STANDARDS

Chapter 1. Definitions

120100. For purposes of this division, the following definitions apply:

(a) "Baseline federal standards" means federal standards in effect as of January 1, 2017.

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

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

(d) "Federal standards" means 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 regulations established pursuant to those federal statutes.

Chapter 2. Operative Provisions

120110. Except as otherwise authorized by state law, all of the following apply:

(a) The board and the department shall regularly assess proposed and final changes to the federal standards.

(b) (1) At least quarterly, the board and the department shall publish 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 stringent than the baseline federal standards.

(2) If the board or the department, as appropriate, determines that a change to the federal standards is less stringent than the baseline federal standards, the board shall consider whether it should adopt the baseline federal standards as a measure in order to maintain the state's protections to be 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 prior to a vote on adoption on its Internet Web site 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 an emergency regulation in accordance with Section 120030.

(d) Notwithstanding any other law, the board or department, 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.

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

120111. (a) An action may be brought by a person in the public interest exclusively to enforce a measure adopted pursuant to subdivision (c) of Section 120110 if all of the following requirements are met:

(1) At least 60 days prior to initiating the action, a complainant provides a written notice to the Attorney General and the counsels for the board or department, as appropriate, a district attorney, a city attorney, county counsel, and a prosecutor 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, a district attorney, a city attorney, county counsel, the counsel for the board or department, as appropriate, or a prosecutor has not commenced an action or has not been diligently prosecuting the action.

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

(c) 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.

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

DIVISION 4. MISCELLANEOUS

120200. 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.

120202. (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. 2. 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, 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.

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