



- Board of Directors  
*Communications and Legislation Committee*

6/11/2019 Board Meeting

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8-3

## Subject

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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

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SB 1 is intended to prevent weakening of California environmental and worker safety standards that may result from weakening 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 address specific provisions.

## Details

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### Background

SB 1 (**Attachment 1**) was introduced by Senators Atkins, Portantino and Stern on December 3, 2018. In March 2019, staff presented SB 1 to the Board recommending Metropolitan oppose the bill unless it is amended. The Board deferred action on the bill to the April Board meeting to allow staff an opportunity to work with the author's office on amendments. Metropolitan staff met with the Pro Tem's staff and the bill's sponsors, Natural Resources Defense Council and Defenders of Wildlife, and shared concerns and proposed amendments. In April, staff brought the bill back to the Board for reconsideration. The Board made a substitute motion to take no position on the bill but directed staff to continue working with the author's office to seek amendments to address Metropolitan's areas of concern.

The bill has been heard in Senate Environmental Quality, Natural Resources and Water, and Judiciary committees and was amended on May 21, 2019. On May 29, SB 1 passed off the Senate Floor. While a few amendments have been made to SB 1, the amendments as a whole did not address the key concerns identified by staff. In fact, the amendments raise additional concerns as discussed below.

### 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 also allow California citizen suits to be brought in state court to enforce baseline federal standards in all areas except the endangered species section. The bill would sunset on January 20, 2025, and would be repealed on January 1, 2026.

Specifically, the bill 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.

### ***May 21, 2019 Amendments***

The authors amended the bill on May 21, 2019. Metropolitan's legislative review and the relevant amendments are summarized below.

- For the sections dealing with clean air, clean water, safe drinking water, and endangered species, the “at least as stringent as” language has been replaced with “at least as protective of public health and safety, the environment, or natural resources.”
- The amended bill significantly expands the citizen suit provisions to allow citizen suits in state court to enforce not only any federal baselines that state agencies adopt under SB 1, as in the bill as introduced, but, if the federal citizen suit provisions are amended to “restrict, condition, abridge, or repeal”, then citizen suits could be brought in state court.
- The clean air, water quality, and drinking water provisions now include language that would make a violation of any federal baseline standards for which there is no state analog into a violation of the analogous state statute the moment the corresponding federal citizen suit provision is amended to “restrict, condition, abridge, or repeal” the citizen suit provision.
- The definition of baseline federal standards for worker protections has been expanded to include federal “guidelines.”
- The amended bill excludes from the definitions of federal baseline standards any federal laws or regulations that were permanently enjoined by a court at the federal baseline date (in most cases January 19, 2017).
- State agencies must publish their quarterly lists of changes to federal baselines and their analyses of whether they have been weakened on their websites and in the California Regulatory Notice Register. The bill as introduced said “publish,” but didn't say how or where. The regulated community tracks agency websites and the Cal Register.
- A savings clause has been added to state that the bill would not interfere with the ongoing Voluntary Agreement process to reach a settlement on the State Water Resources Control Board's Water Quality Control Plan update for the Sacramento-San Joaquin Delta.

### ***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. Although the amendments add “best available science” to the application, they do not address the initial concern that the biological opinion measures and incidental take permit must be as “protective as” existing federal standards.
- Additionally, the amendment language assumes that the California Endangered Species Act (CESA) applies to the CVP. That is an unsettled area of law. Reclamation has not applied for CESA coverage, and it is unlikely to do so even if SB 1 is enacted with the language that attempts to assert that CESA applies to the CVP. This language will likely lead to litigation. In the interim, the SWP would bear the full water costs of meeting the 2008/2009 Biological Opinion Reasonable and Prudent Alternatives. If the litigation is resolved in Reclamation's favor, the SWP would be required to continue to meet outdated permit requirements as a condition of its CESA incidental take permit.
- **Limited public review prior to adoption** – The bill 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 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** – “at least as stringent as” language has been replaced with “at least as protective of public health and safety, the environment, or natural resources.” Whether a state standard adopted under SB 1 is “at least as protective” as a baseline federal standard may cause litigation because reasonable minds can disagree on the question.
- This amendment raises additional concerns because it imports considerations of “public health and safety” into CESA permitting, rather than tailoring the language to each area of environmental regulation.
- **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. Recent amendments broadened citizen suit provisions to allow citizen suits in state court to enforce not only any federal baselines that state agencies adopt under SB 1, as originally introduced, but, if the federal citizen suit provisions are amended to “restrict, condition, abridge, or repeal”, then citizen suits could be brought in state court immediately, without any of the minimal notice provided in the bill.
- **Voluntary Agreements** – Amended language was added stating the bill will not affect the process by which the voluntary agreements under negotiation between the state and various parties regarding the Water Quality Control Plan update for the Sacramento-San Joaquin Delta are entered into. It is not the process but the uncertainty created by the bill for SWP operations that would put at risk significant investments by the various parties to the agreements.

### 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

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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)

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#### 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**

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**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.

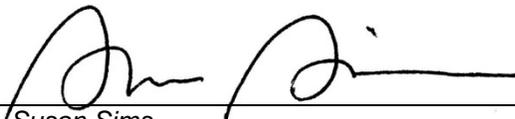
**Fiscal Impact:** Unknown. Metropolitan may be subject to additional compliance costs, project delays, and enforcement or litigation costs.

**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**

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Option #1

  
\_\_\_\_\_  
Susan Sims  
External Affairs, Manager

6/4/2019  
Date

  
\_\_\_\_\_  
Jeffrey Kightlinger  
General Manager

6/6/2019  
Date

**Attachment 1 – Senate Bill 1 as amended, May 21, 2019**

Ref# ea12665129

AMENDED IN SENATE MAY 21, 2019

AMENDED IN SENATE APRIL 11, 2019

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**SENATE BILL****No. 1**

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

December 3, 2018

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An act to add Section 2017 to the Fish and Game Code, and to add and repeal Title 24 (commencing with Section 120000) of the Government Code, relating to ~~state prerogative~~. *public welfare*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1, as amended, 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~~ law, including the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and the Federal Coal Mine Health and Safety Act of 1969, generally establishes standards for workers' ~~rights and worker~~ health and safety.

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

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

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

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

This bill would make it unlawful for a person in California to transport, sell, receive, acquire, or purchase any fish, wildlife, or plant taken, possessed, transported, or sold in violation of a law, treaty, or regulation of the United States in effect on January 19, 2017, or in violation of any law or regulation of any other state or any foreign law in effect on January 1, 2020.

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

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

(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:*

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

3 2017. ~~It~~ *Unless otherwise authorized under state law, it is*  
4 *unlawful for a person in this state to do either of the following:*

5 (a) *To transport, sell, receive, acquire, or purchase any fish,*  
6 *wildlife, or plant taken, possessed, transported, or sold in violation*  
7 *of any law, treaty, or regulation of the United States in effect on*  
8 *January 19, 2017.*

9 (b) *To transport, sell, receive, acquire, or purchase any fish,*  
10 *wildlife, or plant taken, possessed, transported, or sold in violation*  
11 *of any law or regulation of any other state in effect on January 1,*  
12 *2020, or in violation of any foreign law in effect on January 1,*  
13 *2020.*

14 SEC. 2. Title 24 (commencing with Section 120000) is added  
15 to the Government Code, to read:

16

17 TITLE 24. CALIFORNIA ENVIRONMENTAL, PUBLIC  
18 HEALTH, AND WORKERS DEFENSE ACT OF 2019

19

20 DIVISION 1. GENERAL PROVISION

21

22 120000. This title shall be known, and may be cited, as the  
23 California Environmental, Public Health, and Workers Defense  
24 Act of 2019.

1 DIVISION 2. ENVIRONMENT, NATURAL RESOURCES,  
2 ~~AND PUBLIC HEALTH~~ *PUBLIC HEALTH, AND WORKERS*  
3 *HEALTH AND SAFETY*

4

5

CHAPTER 1. FINDINGS AND DECLARATIONS

6

7 120010. (a) The Legislature finds and declares all of the  
8 following:

9

10 (1) For over ~~four~~ *eight* decades, California and its residents have  
11 relied on federal laws, including the federal Clean Air Act (42  
12 U.S.C. Sec. 7401 et seq.), the Federal Water Pollution Control Act  
13 (Clean Water Act) (33 U.S.C. Sec. 1251 et seq.), the federal Safe  
14 Drinking Water Act (42 U.S.C. Sec. 300f et seq.), ~~and~~ the federal  
15 Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.),  
16 *the federal Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201*  
17 *et seq.), the federal Occupational Safety and Health Act of 1970*  
18 *(29 U.S.C. Sec. 651 et seq.), and the Federal Coal Mine Health*  
19 *and Safety Act of 1969 (30 U.S.C. Sec. 801 et seq.),* along with  
20 their implementing regulations and remedies, to protect our state's  
21 public health, *safety*, environment, and natural resources.

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

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

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

37 120011. The purposes of this division are to do all of the  
38 following:

39 (a) Retain protections afforded under the federal laws specified  
in paragraph (1) of subdivision (a) of Section 120010 and

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1 regulations implementing those federal laws in existence as of  
2 January 19, 2017, regardless of actions taken at the federal level.

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

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

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

14 (~~d~~)

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

19 (~~e~~)

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

26

27 CHAPTER 2. GENERAL PROVISIONS

28

29 120030. (a) A state agency may adopt standards or  
30 requirements pursuant to this title, including, but not limited to,  
31 by emergency regulations in accordance with Chapter 3.5  
32 (commencing with Section 11340) of Part 1 of Division 3 of Title  
33 2.

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

38 (c) Notwithstanding Chapter 3.5 (commencing with Section  
39 11340) of Part 1 of Division 3 of Title 2, emergency regulations  
40 adopted by a state agency under this title shall not be subject to

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1 review by the Office of Administrative Law and shall remain in  
2 effect until revised or repealed by the state agency, or January 20,  
3 2025, whichever comes ~~first~~ *first, as long as the emergency*  
4 *regulations adopt the baseline federal standard without substantial*  
5 *modification.*

## 7 CHAPTER 3. OPERATIVE PROVISIONS

## 9 Article 1. Air

10  
11 120040. For purposes of this article, the following definitions  
12 apply:

13 (a) "Air district" means an air quality management or air  
14 pollution control district.

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

18 (c) "Federal standards" means federal laws or federal regulations  
19 implementing the federal Clean Air Act (42 U.S.C. Sec. 7401 et  
20 seq.) ~~including seq.~~ *including, but not limited to,* federal  
21 requirements for a state implementation plan, federal requirements  
22 for the transportation conformity program, and federal requirements  
23 for the prevention of significant deterioration.

24 (d) "State analogue statute" means the California Global  
25 Warming Solutions Act of 2006 (Division 25.5 (commencing with  
26 Section 38500) of the Health and Safety Code) or Division 26  
27 (commencing with Section 39000) of the Health and Safety Code.

28 (e) "State board" means the State Air Resources Board.

29 120041. Except as otherwise authorized by state law, all of the  
30 following apply:

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

33 (b) (1) At least quarterly, the state board shall publish *on its*  
34 *internet website and in the California Regulatory Notice Register*  
35 a list of changes made to the federal standards and provide an  
36 assessment on whether a change made to the federal standards is  
37 more or less ~~stringent~~ *protective of public health and safety, the*  
38 *environment, natural resources, or worker health and safety* than  
39 the baseline federal standards.

1 (2) If the state board determines that a change to the federal  
2 standards is less-stringent *protective of public health and safety,*  
3 *the environment, natural resources, or worker health and safety*  
4 than the baseline federal standards, the state board shall consider  
5 whether it should adopt the baseline federal standards as a measure  
6 in order to maintain the state's protections to be at least as stringent  
7 as the baseline federal standards.

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

11 (c) If the state board decides to adopt a measure pursuant to  
12 subdivision (b), the state board shall adopt the measure by either  
13 of the following procedures:

14 (1) As an emergency regulation in accordance with Section  
15 120030.

16 (2) By promulgation or amendment of a state policy, plan, or  
17 regulation.

18 (d) Notwithstanding any other law, the state board, when  
19 adopting a measure under paragraph (2) of subdivision (c) may  
20 adopt those measures in accordance with Section 100 of Title 1 of  
21 the California Code of Regulations and the measures shall be  
22 deemed to be a change without regulatory effect pursuant to  
23 paragraph (6) of subdivision (a) of that section and not subject to  
24 additional notice, procedural, or other considerations contained in  
25 state analogue statutes identified in this ~~article~~: *article, as long as*  
26 *the measure adopts the baseline federal standards without*  
27 *substantial modification.* Nothing in this chapter shall affect the  
28 imposition of sanctions under the federal Clean Air Act (42 U.S.C.  
29 Sec. 7401 et seq.).

30 (e) In the event that the citizen suit provision set forth in Section  
31 7604 of Title 42 of the United States Code is amended to restrict,  
32 condition, abridge, or repeal the citizen suit provision, ~~the state~~  
33 ~~board may consider the amendment as a change to the federal~~  
34 ~~standards and may adopt the baseline federal standards pursuant~~  
35 ~~to subdivision (c): both of the following apply:~~

36 (1) *A federal baseline standard for which there is no analogous*  
37 *state standard that is more protective of public health and safety,*  
38 *the environment, natural resources, or worker health and safety*  
39 *is deemed to be a state standard, a violation of which constitutes*  
40 *a violation of the state analogue statute.*

## 8

1 (2) *An action may be brought pursuant to Section 120042 to*  
2 *enforce the baseline federal standards, state standards enacted*  
3 *pursuant to the state analogue statute, or other permit conditions*  
4 *as authorized pursuant to the federal Clean Air Act (42 U.S.C.*  
5 *Sec. 7401 et seq.).*

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

9 120042. (a) An action may be brought by a person in the public  
10 interest exclusively to enforce baseline federal standards adopted  
11 as a measure pursuant to subdivision (c) of Section 120041 *or an*  
12 *action may be brought by that person pursuant to subdivision (e)*  
13 *of that section* if all of the following requirements are met:

14 (1) At least 60 days before initiating the action, a complainant  
15 provides a written notice to the Attorney General and the counsel  
16 for the state board, a district attorney, county counsel, counsel of  
17 the air district, and prosecutor in whose jurisdiction the violation  
18 is alleged to have occurred, and the defendant identifying the  
19 specific provisions of the measure alleged to be violated.

20 (2) The Attorney General, a district attorney, a city attorney,  
21 county counsel, counsel of the state board, counsel of an air district,  
22 or a prosecutor has not commenced an action or has not been  
23 diligently prosecuting the action.

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

26 (c) The court may award attorney's fees pursuant to Section  
27 1021.5 of the Code of Civil Procedure, and expert fees and court  
28 costs pursuant to Section 1032 of the Code of Civil Procedure, as  
29 appropriate, for an action brought pursuant to this section.

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

32

33

## Article 2. Water

34

35 120050. For purposes of this article, the following definitions  
36 apply:

37 (a) "Baseline federal standards" means federal standards in  
38 effect as of January 19, 2017, ~~including water quality standards,~~  
39 ~~effluent limitations, and drinking water standards.~~ *that were not*  
40 *otherwise permanently enjoined by a federal court as of that date.*

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1 (b) “Board” means the State Water Resources Control Board.

2 (c) “Federal standards” means federal laws or federal regulations  
3 implementing the federal Safe Drinking Water Act (42 U.S.C. Sec.  
4 300f et seq.) and the Federal Water Pollution Control Act (33  
5 U.S.C. Sec. 1251 et seq.) in effect as of January 19, 2017, ~~including~~  
6 *including, but not limited to*, water quality standards, effluent  
7 limitations, and drinking water standards.

8 (d) “Regional board” means a regional water quality control  
9 board.

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

15 120051. Except as otherwise authorized by state law, all of the  
16 following apply:

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

19 (b) (1) At least quarterly, the board shall publish *on its internet*  
20 *website and in the California Regulatory Notice Register* a list of  
21 changes made to the federal standards and provide an assessment  
22 on whether a change made to the federal standards is more or less  
23 ~~stringent~~ *protective of public health and safety, the environment,*  
24 *natural resources, or worker health and safety* than the baseline  
25 federal standards.

26 (2) If the board determines that a change to the federal standards  
27 is less ~~stringent~~ *protective of public health and safety, the*  
28 *environment, natural resources, or worker health and safety* than  
29 the baseline federal standards, the board shall consider whether it  
30 should adopt the baseline federal standards as a measure in order  
31 to maintain the state’s protections to be at least as stringent as the  
32 baseline federal standards.

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

36 (c) If the board decides to adopt a measure pursuant to  
37 subdivision (b), the board shall adopt the measure by either of the  
38 following procedures:

39 (1) As an emergency regulation in accordance with Section  
40 120030.

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1 (2) By promulgation or amendment of a state policy for water  
2 quality control, a water quality control plan, or regulation.

3 (d) Notwithstanding any other law, the board, when adopting a  
4 measure under paragraph (2) of subdivision (c) may adopt those  
5 measures in accordance with Section 100 of Title 1 of the  
6 California Code of Regulations and the measures shall be deemed  
7 to be a change without regulatory effect pursuant to paragraph (6)  
8 of subdivision (a) of that section and not subject to additional  
9 notice, procedural, or other considerations contained in state  
10 analogue statutes identified in this ~~article~~: *article, as long as the*  
11 *measure adopts the baseline federal standard without substantial*  
12 *modification*. Nothing in this chapter shall affect the imposition  
13 of sanctions under the federal Safe Drinking Water Act (42 U.S.C.  
14 Sec. 300f et seq.) or the Federal Water Pollution Control Act (33  
15 U.S.C. Sec. 1251 et seq.).

16 (e) (1) In the event that the citizen suit provision set forth in  
17 Section 1365 of Title 33 of the United States Code is amended to  
18 restrict, condition, abridge, or repeal the citizen suit provision, ~~the~~  
19 ~~board may consider the amendment as a change to the federal~~  
20 ~~standards and may adopt the baseline federal standards pursuant~~  
21 ~~to subdivision (e): both of the following apply:~~

22 (A) *A federal baseline standard related to water quality standard*  
23 *or effluent limitation for which there is no analogous state standard*  
24 *that is more protective of public health and safety, the environment,*  
25 *natural resources, or worker health and safety is deemed to be a*  
26 *state standard, a violation of which constitutes a violation of the*  
27 *Porter-Cologne Water Quality Control Act (Division 7*  
28 *(commencing with Section 13000) of the Water Code).*

29 (B) *An action may be brought pursuant to Section 120052 to*  
30 *enforce the baseline federal standards, state standards enacted*  
31 *pursuant to the Porter-Cologne Water Quality Control Act, or*  
32 *other conditions on the waste discharge requirements as authorized*  
33 *pursuant to Section 1342(b) of Title 33 of the United States Code.*

34 (2) In the event that the citizen suit provision set forth in Section  
35 300j-8 of Title 42 of the United States Code is amended to restrict,  
36 condition, abridge, or repeal the citizen suit provision, ~~the board~~  
37 ~~may consider the amendment as a change to the federal standards~~  
38 ~~and may adopt the baseline federal standards pursuant to~~  
39 ~~subdivision (e): both of the following apply:~~

## 11

1 (A) A federal baseline standard related to drinking water  
2 standard for which there is no analogous state standard that is  
3 more protective of public health and safety, the environment,  
4 natural resources, or worker health and safety is deemed to be a  
5 state standard, a violation of which constitutes a violation of the  
6 California Safe Drinking Water Act (Chapter 4 (commencing with  
7 Section 116270) of Part 12 of Division 103 of the Health and Safety  
8 Code).

9 (B) An action may be brought pursuant to Section 120052 to  
10 enforce those baseline federal standards, state standards enacted  
11 pursuant to the California Safe Drinking Water Act, or permit  
12 conditions authorized pursuant to Section 300g-2 of Title 42 of  
13 the United States Code.

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

17 120052. (a) An action may be brought by a person in the public  
18 interest exclusively to enforce baseline federal standards adopted  
19 as a measure pursuant to subdivision (c) of Section 120051 or an  
20 action may be brought by that person pursuant to subdivision (e)  
21 of that section if all of the following requirements are met:

22 (1) At least 60 days before initiating the action, a complainant  
23 provides a written notice to the Attorney General and the counsel  
24 for the board, a district attorney, county counsel, counsel of the  
25 regional board, and prosecutor in whose jurisdiction the violation  
26 is alleged to have occurred, and the defendant identifying the  
27 specific provisions of the measure alleged to be violated.

28 (2) The Attorney General, a district attorney, a city attorney,  
29 county counsel, counsel of the board, counsel of a regional board,  
30 or a prosecutor has not commenced an action or has not been  
31 diligently prosecuting the action.

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

34 (c) The court may award attorney's fees pursuant to Section  
35 1021.5 of the Code of Civil Procedure, and expert fees and court  
36 costs pursuant to Section 1032 of the Code of Civil Procedure, as  
37 appropriate, for an action brought pursuant to this section.

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

## 12

1 120053. (a) *This article does not affect the process by which*  
2 *voluntary agreements are entered into to assist in the*  
3 *implementation of new water quality standards lawfully adopted*  
4 *by the board.*

5 (b) *It is the intent of the Legislature that the process by which*  
6 *voluntary agreements are entered into is separate and distinct*  
7 *from law and regulations, including federal baseline standards,*  
8 *under which the Central Valley Project and the State Water Project*  
9 *are subject to the federal Endangered Species Act of 1973 (16*  
10 *U.S.C. Sec. 1531 et seq.) and the California Endangered Species*  
11 *Act (Chapter 1.5 (commencing with Section 2050) of Division 3*  
12 *of the Fish and Game Code).*

13

14 Article 3. Endangered and Threatened Species

15

16 120060. For purposes of this article, “baseline federal  
17 standards” means the federal Endangered Species Act of 1973 (16  
18 U.S.C. Sec. 1531 et seq.) in effect as of January 19, 2017, its  
19 implementing regulations, and any incidental take permits,  
20 incidental take statements, or biological opinions in effect as of  
21 January 19, ~~2017~~, 2017, that were not otherwise permanently  
22 enjoined by a federal court as of that date.

23 120061. Except as otherwise authorized by state law, the  
24 following apply:

25 (a) To ensure no backsliding as a result of any change to the  
26 ~~federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et~~  
27 ~~seq.) or its implementing regulations,~~ *baseline federal standards,*  
28 *the Fish and Game Commission shall determine whether to list,*  
29 *in accordance with subdivision (b), a species, subspecies, or*  
30 *distinct population segment under the California Endangered*  
31 *Species Act (Chapter 1.5 (commencing with Section 2050) of*  
32 *Division 3 of the Fish and Game Code) in the event of either of*  
33 *the following occurs:*

34 (1) *The federal delisting of a the species, subspecies, or distinct*  
35 *population segment that is eligible for protection under the*  
36 *California Endangered Species Act and that is listed as endangered*  
37 *or threatened pursuant to the federal Endangered Species Act of*  
38 *1973 (16 U.S.C. Sec. 1531 et seq.) as of January 1, 2017, or a 19,*  
39 *2019.*

## 13

1 (2) A change in the legally protected status of ~~such a~~ *the* species,  
2 subspecies, or distinct population segment, including through a  
3 change in listing from endangered to threatened, the adoption of  
4 a rule pursuant to Section 4(d) of the federal Endangered Species  
5 Act of 1973, or any amendment to the federal Endangered Species  
6 Act of 1973 or its implementing regulations, or any exemption  
7 from the application of the federal Endangered Species Act of  
8 1973 to a federally listed species, subspecies, or distinct population  
9 segment, as of January 1, 2017, the Fish and Game Commission  
10 shall determine whether to list, in accordance with subdivision (b),  
11 that species, subspecies, or distinct population segment under the  
12 California Endangered Species Act pursuant to this section. *federal*  
13 *baseline standard.*

14 (b) The Fish and Game Commission shall list the affected  
15 species, subspecies, or distinct population segment identified in  
16 subdivision (a), pursuant to subdivision (c) and without following  
17 the regular listing process set forth in Article 2 (commencing with  
18 Section 2070) of Chapter 1.5 of Division 3 of the Fish and Game  
19 Code, no later than the conclusion of its second regularly scheduled  
20 meeting or within three months, whichever is shorter, after the  
21 occurrence of the event described in subdivision (a) unless either  
22 the Fish and Game Commission determines that listing of the  
23 species, subspecies, or distinct population segment is not warranted  
24 because it does not meet the criteria in Chapter 1.5 (commencing  
25 with Section 2050) of Division 3 of the Fish and Game Code or  
26 its implementing regulations or the Department of Fish and  
27 Wildlife recommends that the species, subspecies, or distinct  
28 population segment undergo the regular listing process. If the  
29 Department of Fish and Wildlife makes a recommendation that  
30 the species, subspecies, or distinct population segment undergo  
31 the regular listing process, the Fish and Game Commission shall  
32 either accept the recommendation, in which event the Fish and  
33 Game Commission shall be deemed to have accepted a petition  
34 for listing the species, subspecies, or distinct population segment  
35 pursuant to paragraph (2) of subdivision (e) of Section 2074.2 of  
36 the Fish and Game Code, or reject the recommendation and  
37 immediately list the species, subspecies, or distinct population  
38 segment pursuant to this subdivision.

39 (c) Notwithstanding any other law or regulation, because a  
40 decision by the Fish and Game Commission to list a species,

## 14

1 subspecies, or distinct population segment without following the  
2 regular listing process becomes effective immediately, the Fish  
3 and Game Commission shall add that species, subspecies, or  
4 distinct population segment to the list of endangered or threatened  
5 ~~species pursuant to Section 100 of Title 1 of the California Code~~  
6 ~~of Regulations, species,~~ and the addition of that species, subspecies,  
7 or distinct population segment to the list shall be deemed to be a  
8 change without regulatory effect pursuant to paragraph (6) of  
9 subdivision (a) of that section.

10 (d) (1) Upon the listing of any species, subspecies, or distinct  
11 population segment under this section, the Fish and Game  
12 Commission or the Department of Fish and Wildlife may authorize  
13 the taking of such species, subspecies, or distinct population  
14 segment as otherwise provided for in the Fish and Game Code. In  
15 lieu of authorizing take under the provisions of Chapter 1.5  
16 (commencing with Section 2050) of Division 3 of the Fish and  
17 Game Code, the Fish and Game Commission or the Department  
18 of Fish and Wildlife may adopt the terms and conditions of any  
19 rule promulgated under Section 4(d) of the federal Endangered  
20 Species Act of 1973, federal incidental take statement, incidental  
21 take permit, or biological opinion in effect at the time of the event  
22 described in subdivision (a).

23 (2) The Department of Fish and Wildlife shall ensure that  
24 protections remain in place pursuant to regulation, incidental take  
25 permit, or consistency determination that are at least as ~~stringent~~  
26 *protective of public health and safety, the environment, or natural*  
27 *resources* as required by the baseline federal standards, as  
28 determined by the Department of Fish and ~~Wildlife. Wildlife, and~~  
29 *according to the best available science.*

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

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

38 (f) For those species, subspecies, or distinct population segment  
39 that the Fish and Game Commission lists pursuant to subdivision  
40 (b), ~~or for which baseline federal standards are retained actions~~

1 *taken pursuant to subdivision ~~(d)~~, (d) to ensure that protections*  
2 *remain in place that are at least as protective as baseline federal*  
3 *standards, the California Environmental Quality Act (Division 13*  
4 *(commencing with Section 21000) of the Public Resources Code)*  
5 *shall not apply.*

6 (g) The provisions of the California Endangered Species Act  
7 are measures “relating to the control, appropriation, use, or  
8 distribution of water” within the meaning of Section 8 of the federal  
9 Reclamation Act of 1902 (43 U.S.C. Section 383) and shall apply  
10 to the United States Bureau of Reclamation’s operation of the  
11 federal Central Valley Project.

12  
13 ~~DIVISION 3. LABOR STANDARDS~~

14  
15  
16 ~~CHAPTER 1. DEFINITIONS~~

17  
18  
19 *Article 4. Worker Health and Safety*

20  
21 ~~120100.~~

22 *120070.* For purposes of this ~~division~~, *article*, the following  
23 definitions apply:

24 (a) “Baseline federal standards” means federal standards in  
25 effect as of January 1, ~~2017~~, *2017, that were not otherwise*  
26 *permanently enjoined by a federal court as of that date.*

27 (b) “Board” means the Occupational Safety and Health  
28 Standards Board.

29 (c) “Department” means the Department of Industrial Relations.

30 (d) “Federal standards” means *health and safety standards set*  
31 *forth in* the federal Fair Labor Standards Act of 1938, as amended  
32 (29 U.S.C. Sec. 201 et seq.), the federal Occupational Safety and  
33 Health Act of 1970, as amended (29 U.S.C. Sec. 651 et seq.), the  
34 Federal Coal Mine Health and Safety Act of 1969, as amended  
35 (30 U.S.C. Sec. 801 et seq.), or *in regulations and guidelines*  
36 *established pursuant to those federal statutes.*

37 (e) “*State analogue statute*” means *the Labor Code, including*  
38 *the California Occupational Safety and Health Act of 1973*  
39 *(Division 5 (commencing with Section 6300) of the Labor Code).*

1  
2                   CHAPTER 2. ~~OPERATIVE PROVISIONS~~

3  
4     ~~120110.~~

5     120071. Except as otherwise authorized by state law, all of the  
6 following apply:

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

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

15     (2) If the board or the department, as appropriate, determines  
16 that a change to the federal standards is less ~~stringent~~ *protective*  
17 *of worker health and safety* than the baseline federal standards,  
18 the board shall consider whether it should adopt the baseline federal  
19 standards as a measure in order to maintain the state's protections  
20 to be at least as stringent as the baseline federal standards.

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

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

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

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

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

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

4 ~~120111.~~

5 *120072.* (a) An action may be brought by a person in the public  
6 interest exclusively to enforce *a federal baseline standard* as a  
7 measure adopted pursuant to subdivision (c) of Section ~~120110~~  
8 *120071* if all of the following requirements are met:

9 (1) At least 60 days before initiating the action, a complainant  
10 provides a written notice to the Attorney General and the counsels  
11 for the board or department, as appropriate, a district attorney, a  
12 city attorney, county counsel, and a prosecutor in whose  
13 jurisdiction the violation is alleged to have occurred, and the  
14 defendant identifying the specific provisions of the measure alleged  
15 to be violated.

16 (2) The Attorney General, a district attorney, a city attorney,  
17 county counsel, the counsel for the board or department, as  
18 appropriate, or a prosecutor has not commenced an action or has  
19 not been diligently prosecuting the action.

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

22 (c) The court may award attorney's fees pursuant to Section  
23 1021.5 of the Code of Civil Procedure, and expert fees and court  
24 costs pursuant to Section 1032 of the Code of Civil Procedure, as  
25 appropriate, for an action brought pursuant to this section.

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

28  
29 DIVISION ~~4.3.~~ MISCELLANEOUS

30  
31 ~~120200.~~

32 *120100.* The provisions of this title are severable. If any  
33 provision of this title or its application is held invalid, that  
34 invalidity shall not affect other provisions or applications that can  
35 be given effect without the invalid provision or application.

36 ~~120202.~~

37 *120102.* (a) This title shall become inoperative on January 20,  
38 2025, and, as of January 1, 2026, is repealed.

**18**

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

4 SEC. 3. No reimbursement is required by this act pursuant to  
5 Section 6 of Article XIII B of the California Constitution because  
6 a local agency or school district has the authority to levy service  
7 charges, fees, or assessments sufficient to pay for the program or  
8 level of service mandated by certain mandates in this act or because  
9 costs that may be incurred by a local agency or school district will  
10 be incurred because this act creates a new crime or infraction,  
11 eliminates a crime or infraction, or changes the penalty for a crime  
12 or infraction, within the meaning of Section 17556 of the  
13 Government Code.

14 However, if the Commission on State Mandates determines that  
15 this act contains other costs mandated by the state, reimbursement  
16 to local agencies and school districts for those costs shall be made  
17 pursuant to Part 7 (commencing with Section 17500) of Division  
18 4 of Title 2 of the Government Code.