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UNFINISHED BUSINESS

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Bill No: SB 821  
Author: Committee on Natural Resources and Water  
Amended: 7/5/21  
Vote: 27 - Urgency

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SENATE NATURAL RES. & WATER COMMITTEE: 9-0, 4/15/21  
AYES: Laird, Jones, Allen, Eggman, Grove, Hertzberg, Hueso, Limón, Stern

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 37-0, 5/10/21 (Consent)  
AYES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk  
NO VOTE RECORDED: Caballero, Limón, Stern

ASSEMBLY FLOOR: 70-0, 7/15/21 (Consent) - See last page for vote

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**SUBJECT:** Sacramento-San Joaquin Delta: Delta Independent Science Board

**SOURCE:** Author

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**DIGEST:** This bill re-establishes the independence of the Delta Independent Science Board (DISB) by providing its members are not state employees and specifying the DISB member's contracted rate of hourly compensation.

*Assembly Amendments* require the Delta Stewardship Council (DSC) to contract for the services of the members of the DISB at an hourly rate of \$150, adjusted for inflation, and add an urgency clause.

**ANALYSIS:**

Existing law:

- 1) Declares that the Sacramento-San Joaquin Delta (the Delta) “is a critically important natural resource for California and the nation. It serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America.”
- 2) Creates the DSC and charges it with developing the Delta Plan.
- 3) Defines the “Delta Plan” as the comprehensive, long-term management plan for the Delta to achieve the coequal goals.
  - a) “Coequal goals” means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.
  - b) The Delta Plan is to meet a number of requirements, including that it “[b]e based on the best available scientific information and the independent science advice provided by the Delta Independent Science Board.”
- 4) Creates the DISB in state government as follows:
  - a) The DISB consist of no more than 10 members appointed by the DSC. The term of office for members of the DISB shall be five years. A member may serve no more than two terms.
  - b) Members of the DISB:
    - i) Must be nationally or internationally prominent scientists with appropriate expertise to evaluate the broad range of scientific programs that support adaptive management of the Delta.
    - ii) Must not be directly affiliated with a program or agency subject to the review activities of the DISB.
  - c) The DISB is required to provide oversight of the scientific research, monitoring, and assessment programs that support adaptive management of

the Delta through periodic reviews of each of those programs, and the reviews must be scheduled to ensure that all Delta scientific research, monitoring, and assessment programs are reviewed at least once every four years.

- d) The DISB must submit to the DSC a report on the results of each review, including recommendations for any changes in the programs reviewed by the board.
- 5) Requires the DSC, after consultation with the DISB, to appoint a lead scientist for the Delta Science Program.
- a) The lead scientist must meet all of the following qualifications:
    - i) Hold an advanced degree in a field related to water or ecosystem management.
    - ii) Have a strong record of scientific research and publication in peer-reviewed scientific journals in a field related to water or ecosystem management.
    - iii) Have experience advising high-level managers in science-based decision making in the areas of water management and ecosystem restoration.
    - iv) Have the capability to guide the application of an adaptive management process to resource management policy decisions in the Delta.
    - v) The term of office for the lead scientist shall be no more than three years. The lead scientist may serve no more than two terms.
  - b) The lead scientist is required to oversee the implementation of the Delta Science Program. In carrying out that responsibility, the lead scientist shall regularly consult with the agencies participating in the program.
- 6) Provides that the mission of the Delta Science Program is to provide the best possible unbiased scientific information to inform water and environmental decision making in the Delta.
- a) That mission is to be carried out through funding research, synthesizing and communicating scientific information to policymakers and decision makers, promoting independent scientific peer review, and coordinating with Delta agencies to promote science-based adaptive management.

- b) The Delta Science Program shall assist with development and periodic updates of the Delta Plan's adaptive management program.

This bill:

- 1) Provides that members of the DISB are not employees of DSC and shall perform their duties independent of the DSC.
- 2) Requires the DSC to contract for the services of the members of the DISB at an hourly rate of \$150, increased annually based on inflation and cost of living adjustments.

## **Background**

Recently, the DSC concluded that members of the DISB must be state employees.

The logic appears to be:

- 1) Article VII, Section 1(a) of the California Constitution states, "The civil service includes every officer and employee of the State except as otherwise provided in this Constitution."
- 2) Article VII, Section 4, which lists the exceptions to Section 1(a), does not include an exception that applies to the DISB.
- 3) The exception in Section 4(d) does not apply because the members to the DISB are appointed by the DSC, not the Governor or Legislature.
- 4) Consequently, members of the DISB must be exempt state employees.
- 5) As the salaries for DISB members are not established in statute, they must be compensated via per diem of \$100 per day, instead of the \$4,000 per month as consultants.

The consequences of this decision have significantly impaired the ability of the DISB to recruit/retain well qualified members and calls into question its ability to do its duties. Key issues include:

- 1) *Adequate Compensation.* As employees, they may be limited in what they are paid, which would not attract the world-class scientists that the DISB is designed to include. As contractors, their compensation can focus on paying for their time, not their benefits.

- 2) *Conflicts*. If they become state employees, their academic institutions may have conflicts rules, particularly those who teach at institutions outside California, such as the current chair, who teaches at Oregon State University.
- 3) *Independence*. If the DISB members are employees of the DSC, there is the real concern that the DSC will direct the outcomes of DISB's scientific reviews and recommendations.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: No

According to the Assembly Appropriations Committee, the costs are absorbable within existing resources.

**SUPPORT:** (Verified 7/15/21)

Association of California Water Agencies  
 California Sportfishing Protection Alliance  
 California Water Impact Network  
 California Water Research  
 North Coast Rivers Alliance  
 San Joaquin Audubon Society  
 Southern California Watershed Alliance  
 The Fly Fishers of Davis

**OPPOSITION:** (Verified 7/15/21)

None received

**ARGUMENTS IN SUPPORT:** The Association of California Water Agencies writes, "SB 821 seeks to reinforce the independence of the Science Board. ACWA agrees with that goal.

"Management of the Sacramento-San Joaquin Delta has historically been one of the greatest points of conflict for water management in California. ACWA recognizes the importance of both the Delta Stewardship Council's and the Science Board's roles in furthering the coequal goals of providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem. To reduce conflict and manage the Delta effectively, decisions must be based on shared, trusted, and independent science.

"ACWA supports SB 821 and respectfully requests your 'Aye' vote ..."

ASSEMBLY FLOOR: 70-0, 7/15/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bryan, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Low, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Patterson, Petrie-Norris, Quirk, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Burke, Davies, Lorena Gonzalez, Kiley, Maienschein, Nguyen, O'Donnell, Quirk-Silva, Smith

Prepared by: Dennis O'Connor / N.R. & W. / (916) 651-4116  
7/26/21 10:16:17

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