



• **Board of Directors**
Legislation, Regulation, and Communication Committee

4/11/2023 Board Meeting

7-14

Subject

Authorize the General Manager to co-sponsor, if amended, Assembly Bill 1572 (Friedman, D – Glendale): Potable water: non-functional turf; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

Metropolitan has received a request to co-sponsor Assembly Bill 1572 (Friedman, D – Glendale): Potable water: non-functional turf (NFT).

If passed as introduced, this bill would make legislative findings and declarations concerning water use, including that the use of potable water to irrigate NFT is wasteful and incompatible with state policy relating to climate change, water conservation, and reduced reliance on the Sacramento-San Joaquin Delta ecosystem. The bill would direct all appropriate state agencies to encourage and support the elimination of irrigation of NFT with potable water.

Metropolitan's Board supports the long-term conversion of NFT in residential, commercial, industrial, and institutional (CII) landscapes and a ban on the installation of NFT in new construction. Discussions with member agency staff highlighted a number of policy and operational challenges at the retail level and are outlined below with possible amendment concepts to address the concerns.

Timing and Urgency

Due to the constitutional deadlines in the state legislative process, staff recommends early action to enable collaboration and partnership with all communities of interest, including the Metropolitan member agencies, the co-sponsors, and other local groups.

Details

Bill Actions

AB 1572, as introduced (**Attachment 1**), would require the State Water Resources Control Board (SWRCB) to establish, no later than July 1, 2025, specified compliance, certification, and reporting requirements related to the irrigation of NFT. Specifically, the bill would prohibit the irrigation of NFT in CII and multi-family residential projects (covered properties) with potable water by specified timelines as follows:

- All properties owned or leased by the Department of General Services, beginning January 1, 2026.
- All commercial, industrial, municipal, and institutional properties, except municipal properties in a disadvantaged community, beginning January 1, 2027.
- All multi-family residential properties, except multi-family residential affordable housing properties and all municipal properties in a disadvantaged community, beginning January 1, 2028.
- All multi-family residential affordable housing properties and all municipal properties in a disadvantaged community, beginning January 1, 2029.

In setting forth these requirements, the bill provides the SWRCB with the discretion to extend compliance dates, including for economic hardship, critical business needs, and other categories to be determined that are essential for public health and safety.

Owners of covered properties would be required to certify their compliance with these provisions pursuant to regulations to be established by the SWRCB no later than July 1, 2025. Additionally, the bill would authorize an urban water supplier, city, county, or city and county to enforce these provisions.

The bill would also place related requirements on the SWRCB and the Department of Water Resources (DWR), including, beginning July 1, 2028, requiring the SWRCB, in collaboration with the DWR and with assistance from urban water suppliers, to annually conduct a compliance audit for two of the state's ten hydrologic regions, so that all of the state's hydrologic regions receive an audit once every five years, as specified. Audits would be conducted and reported by "visual inspection" of a representative sample of various property types.

In addition, the bill establishes new education requirements relative to native and drought-tolerant vegetation. By requiring the Division of Agriculture and Natural Resources within the office of the President of the University of California, in consultation with the Department of Education, to disseminate information on native and drought-tolerant plants that support vibrant ecosystems, including pollinators, in schools serving kindergarten and grades 1 through 12 and would additionally require the vice president of the division to, no later than June 30, 2026, report to the Senate Committee on Environmental Quality and the Assembly Committee on Water, Parks, and Wildlife on progress in implementing these provisions.

Finally, the bill would require the Governor's Office of Business and Economic Development to support small and minority-owned businesses that provide services that advance compliance with these provisions.

Background

On October 11, 2022, Metropolitan's Board took action to support the long-term conversion of NFT in residential, CII landscapes and a ban on the installation of NFT in new construction. The resolution encouraged municipalities to enact ordinances banning the irrigation of NFT with potable water.

In addition, on November 15, 2022, Metropolitan joined 30 agencies across the Colorado River Basin, including several member agencies, in signing on to a Memorandum of Understanding, committing to reduce NFT across the service area by 30%.

To better understand and represent the member agency perspectives on the bill, Metropolitan convened a work group of member agency staff to seek input on the issue of NFT and AB 1572, specifically, and met individually with a number of member agencies for more in-depth input from the local level. The NFT work group has met twice (March 15 and April 3). Additionally, Metropolitan staff met with the bill sponsors and facilitated a discussion with the member agencies on proposed amendments, which are not yet in print at the time of this letter. The proposed amendments to the bill incorporate many of the amendments requested by the Association of California Water Agencies.

While most of the agencies expressed conceptual support for a legislative framework that would discourage the irrigation of NFT with potable water, they expressed concerns with some of the provisions in AB 1572 regarding its implementation.

The feedback from the member agencies fell into the following broad categories:

1. Regulatory timing – member agency staff expressed concerns around conflicts in the implementation of the long-term framework for indoor water use efficiency objectives and this legislation.
2. Administrative burden and liability – member agency staff expressed concerns that addressed the burden created by increased reporting and enforcement, a lack of flexibility and local control, the need for funding support, along with potential financial liability for penalties that may be accrued.
3. Lack of clarity – member agency staff expressed concern around ambiguity in the bill language, as introduced, regarding conflicting or ambiguous provisions regarding enforcement, designations of "functional" versus "non-functional," and a lack of parity between public and private entities.

In addition, the agencies expressed the need for funding to help incentivize the conversion of NFT, particularly for underserved communities, and to protect trees and prevent blight from lack of vegetation.

Suggested amendments identified by the workgroup include:

1. Reduce administrative burden and liability by clarifying SWRCB will be responsible for processing certifications of compliance, rather than the water purveyor, and ensure that penalty accrues to the violator, not the water agency, to protect compliant ratepayers. Additionally, amendments to ensure that assistance with audits will not require the collection of data not collected in the ordinary course of business.
2. Clarity in definitions and metrics to assist in local compliance and certainty.
3. Possible credit system, waivers, or exemptions for agencies that already meet a specified standard, as defined in the local model landscape water efficiency ordinances and relief for agencies that have invested, or are investing, in recycled water for properties currently served by potable supplies.
4. Delay in compliance deadlines to allow for full implementation and assessments of other regulatory conservation objectives and exemptions for multi-family residential and municipal buildings within underserved communities until a funding source is identified.

Staff recommends co-sponsoring this legislation if it is amended to address the concerns expressed by our member agencies and their retail providers and to advance the objectives approved by the Board.

Policy

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 (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) 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 (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 co-sponsor, if amended, AB 1572 (Friedman): Potable water: non-functional turf.

Fiscal Impact: Unknown

Business Analysis: Work with the author, sponsors and stakeholders to obtain desired amendments, and reserve the right to withdraw if issues cannot be worked out consistent with board direction and without potential adverse impacts to Metropolitan and its member agencies.

Option #2

Do not authorize the General Manager to co-sponsor, but authorize a position of support if amended.

Fiscal Impact: Unknown

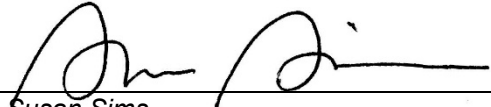
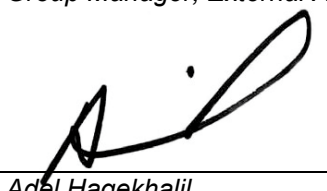
Business Analysis: Consistent with board direction, Metropolitan may take a support if amended position and could work with the bill author and co-sponsors to seek desired amendments as directed to prevent adverse effects to Metropolitan and its member agencies.

Option #3

Take no action

Staff Recommendation

Option # 1

 Susan Sims Group Manager, External Affairs	4/5/2023 Date
 Adel Hagekhalil General Manager	4/6/2023 Date

**Attachment 1 – Bill text for AB 1572 (Friedman): Potable water: non-functional turf
(as introduced, February 17, 2023)**

Ref# ea12693248

california legislature—2023–24 regular session

ASSEMBLY BILL**No. 1572**

Introduced by Assembly Member Friedman

February 17, 2023

An act to amend Section 10608.12 of, to add Section 110 to, and to add Chapter 2.5 (commencing with Section 10608.14) to Part 2.55 of Division 6 of, the Water Code, relating to water.

legislative counsel's digest

AB 1572, as introduced, Friedman. Potable water: nonfunctional turf.

(1) Existing law establishes various state water policies, including the policy that the use of water for domestic purposes is the highest use of water.

This bill would make legislative findings and declarations concerning water use, including that the use of potable water to irrigate nonfunctional turf is wasteful and incompatible with state policy relating to climate change, water conservation, and reduced reliance on the Sacramento-San Joaquin Delta ecosystem. The bill would direct all appropriate state agencies to encourage and support the elimination of irrigation of nonfunctional turf with potable water.

(2) Existing law provides various findings and declarations of the Legislature related to sustainable water use and demand reduction. Existing law imposes various water use reduction requirements that apply to urban retail water suppliers, including a requirement that the state achieve a 20% reduction in urban per capita water use by December 31, 2020.

This bill would prohibit the use of potable water, as defined, for the irrigation of nonfunctional turf located on commercial, industrial, municipal, institutional, and multifamily residential properties, as

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specified. The bill would require the State Water Resources Control Board to establish, no later than July 1, 2025, specified compliance, certification, and reporting requirements. The bill would require owners of covered properties to certify their compliance with these provisions, as specified. The bill would authorize an urban water supplier, city, county, or city and county to enforce these provisions. The bill would place related requirements on the board and the Department of Water Resources, including, beginning July 1, 2028, requiring the board, in collaboration with the department and with assistance from urban water suppliers, to annually conduct a compliance audit for 2 of the state's hydrologic regions, so that all of the state's hydrologic regions receive an audit once every 5 years, as specified. The bill would require the Division of Agriculture and Natural Resources within the office of the President of the University of California, in consultation with the Department of Education, to disseminate information on native and drought-tolerant plants that support vibrant ecosystems, including pollinators, in schools serving kindergarten and grades 1 through 12 and would additionally require the vice president of the division to, no later than June 30, 2026, report to the Senate Committee on Environmental Quality and the Assembly Committee on Water, Parks, and Wildlife on progress in implementing these provisions. The bill would require the Governor's Office of Business and Economic Development to support small and minority-owned businesses that provide services that advance compliance with these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 110 is added to the Water Code, to read:
- 2 110. (a) The Legislature hereby finds and declares all of the
- 3 following:
- 4 (1) The use of potable water to irrigate nonfunctional turf is
- 5 wasteful and incompatible with state policy relating to climate
- 6 change, water conservation, and reduced reliance on the
- 7 Sacramento-San Joaquin Delta ecosystem.
- 8 (2) The Governor reported in August 2022 that climate change
- 9 will bring significant enduring reductions in California's water
- 10 supply and that the state must take steps to respond to this reality.

(3) The State of Nevada enacted AB 356 in 2021 to prohibit the use of Colorado River water to irrigate nonfunctional turf on all properties except single-family residences by January 1, 2027.

(b) It is the intent of the Legislature that the irrigation of grasses for agricultural production shall not be limited by requirements to eliminate the use of potable water to irrigate nonfunctional turf.

(c) The Legislature hereby directs all appropriate state agencies to encourage and support the elimination of irrigation of nonfunctional turf with potable water.

SEC. 2. Section 10608.12 of the Water Code is amended to read:

10608.12. Unless the context otherwise requires, the following definitions govern the construction of this part:

(a) *“Affordable housing” has the same meaning as defined in Section 34191.30 of the Health and Safety Code.*

~~(a)~~

(b) “Agricultural water supplier” means a water supplier, either publicly or privately owned, providing water to 10,000 or more irrigated acres, excluding recycled water. “Agricultural water supplier” includes a supplier or contractor for water, regardless of the basis of right, that distributes or sells water for ultimate resale to customers. “Agricultural water supplier” does not include the department.

~~(b)~~

(c) “Base daily per capita water use” means any of the following:

(1) The urban retail water supplier’s estimate of its average gross water use, reported in gallons per capita per day and calculated over a continuous 10-year period ending no earlier than December 31, 2004, and no later than December 31, 2010.

(2) For an urban retail water supplier that meets at least 10 percent of its 2008 measured retail water demand through recycled water that is delivered within the service area of an urban retail water supplier or its urban wholesale water supplier, the urban retail water supplier may extend the calculation described in paragraph (1) up to an additional five years to a maximum of a continuous 15-year period ending no earlier than December 31, 2004, and no later than December 31, 2010.

(3) For the purposes of Section 10608.22, the urban retail water supplier’s estimate of its average gross water use, reported in gallons per capita per day and calculated over a continuous

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1 five-year period ending no earlier than December 31, 2007, and
2 no later than December 31, 2010.

3 ~~(e)~~

4 ~~(d)~~ “Baseline commercial, industrial, and institutional water
5 use” means an urban retail water supplier’s base daily per capita
6 water use for commercial, industrial, and institutional users.

7 ~~(d)~~

8 ~~(e)~~ “CII water use” means water used by commercial water
9 users, industrial water users, institutional water users, and large
10 landscape water users.

11 ~~(e)~~

12 ~~(f)~~ “Commercial water user” means a water user that provides
13 or distributes a product or service.

14 ~~(f)~~

15 ~~(g)~~ “Compliance daily per capita water use” means the gross
16 water use during the final year of the reporting period, reported in
17 gallons per capita per day.

18 ~~(g)~~

19 ~~(h)~~ “Disadvantaged community” means a community with an
20 annual median household income that is less than 80 percent of
21 the statewide annual median household income.

22 ~~(i)~~ “*Division*” means the *Division of Agriculture and Natural*
23 *Resources within the office of the President of the University of*
24 *California*.

25 ~~(h)~~

26 ~~(j)~~ “Gross water use” means the total volume of water, whether
27 treated or untreated, entering the distribution system of an urban
28 retail water supplier, excluding all of the following:

29 (1) Recycled water that is delivered within the service area of
30 an urban retail water supplier or its urban wholesale water supplier.

31 (2) The net volume of water that the urban retail water supplier
32 places into long-term storage.

33 (3) The volume of water the urban retail water supplier conveys
34 for use by another urban water supplier.

35 (4) The volume of water delivered for agricultural use, except
36 as otherwise provided in subdivision (f) of Section 10608.24.

37 ~~(i)~~

38 ~~(k)~~ “Industrial water user” means a water user that is primarily
39 a manufacturer or processor of materials as defined by the North
40 American Industry Classification System code sectors 31 to 33,

1 inclusive, or an entity that is a water user primarily engaged in
2 research and development.

3 ~~(j)~~

4 (l) “Institutional water user” means a water user dedicated to
5 public service. This type of user includes, among other users,
6 higher education institutions, schools, courts, churches, hospitals,
7 government facilities, and nonprofit research institutions.

8 ~~(k)~~

9 (m) “Interim urban water use target” means the midpoint
10 between the urban retail water supplier’s base daily per capita
11 water use and the urban retail water supplier’s urban water use
12 target for 2020.

13 ~~(l)~~

14 (n) “Large landscape” means a nonresidential landscape as
15 described in the performance measures for CII water use adopted
16 pursuant to Section 10609.10.

17 ~~(m)~~

18 (o) “Locally cost effective” means that the present value of the
19 local benefits of implementing an agricultural efficiency water
20 management practice is greater than or equal to the present value
21 of the local cost of implementing that measure.

22 (p) “Multifamily residential property” means a property that
23 includes a building containing more than four dwelling units.

24 (q) “Nonfunctional turf” means any turf that is not located in
25 areas designated by a property owner or a government agency for
26 recreational use or public assembly. Nonfunctional turf does not
27 include turf located in cemeteries.

28 ~~(n)~~

29 (r) “Performance measures” means actions to be taken by urban
30 retail water suppliers that will result in increased water use
31 efficiency by CII water users. Performance measures may include,
32 but are not limited to, educating CII water users on best
33 management practices, conducting water use audits, and preparing
34 water management plans. Performance measures do not include
35 process water.

36 ~~(o)~~

37 (s) “Potable reuse” means direct potable reuse, indirect potable
38 reuse for groundwater recharge, and reservoir water augmentation
39 as those terms are defined in Section 13561.

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1 (t) *“Potable water” means water that is suitable for human*
2 *consumption.*

3 ~~(p)~~

4 (u) *“Process water” means water used by industrial water users*
5 *for producing a product or product content or water used for*
6 *research and development. Process water includes, but is not*
7 *limited to, continuous manufacturing processes, and water used*
8 *for testing, cleaning, and maintaining equipment. Water used to*
9 *cool machinery or buildings used in the manufacturing process or*
10 *necessary to maintain product quality or chemical characteristics*
11 *for product manufacturing or control rooms, data centers,*
12 *laboratories, clean rooms, and other industrial facility units that*
13 *are integral to the manufacturing or research and development*
14 *process is process water. Water used in the manufacturing process*
15 *that is necessary for complying with local, state, and federal health*
16 *and safety laws, and is not incidental water, is process water.*
17 *Process water does not mean incidental water uses.*

18 (v) *“Public water system” has the same meaning as defined in*
19 *Section 116275 of the Health and Safety Code.*

20 ~~(q)~~

21 (w) *“Recycled water” means recycled water, as defined in*
22 *subdivision (n) of Section 13050.*

23 ~~(r)~~

24 (x) *“Regional water resources management” means sources of*
25 *supply resulting from watershed-based planning for sustainable*
26 *local water reliability or any of the following alternative sources*
27 *of water:*

28 (1) *The capture and reuse of stormwater or rainwater.*

29 (2) *The use of recycled water.*

30 (3) *The desalination of brackish groundwater.*

31 (4) *The conjunctive use of surface water and groundwater in a*
32 *manner that is consistent with the safe yield of the groundwater*
33 *basin.*

34 ~~(s)~~

35 (y) *“Reporting period” means the years for which an urban retail*
36 *water supplier reports compliance with the urban water use targets.*

37 (z) *“Turf” has the same meaning as defined in Section 491 of*
38 *Title 23 of the California Code of Regulations.*

39 ~~(t)~~

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1 (aa) “Urban retail water supplier” means a water supplier, either
2 publicly or privately owned, that directly provides potable
3 municipal water to more than 3,000 end users or that supplies more
4 than 3,000 acre-feet of potable water annually at retail for
5 municipal purposes.

6 (ab) “Urban water supplier” has the same meaning as defined
7 in Section 10617.

8 ~~(u)~~

9 (ac) “Urban water use objective” means an estimate of aggregate
10 efficient water use for the previous year based on adopted water
11 use efficiency standards and local service area characteristics for
12 that year, as described in Section 10609.20.

13 ~~(v)~~

14 (ad) “Urban water use target” means the urban retail water
15 supplier’s targeted future daily per capita water use.

16 ~~(w)~~

17 (ae) “Urban wholesale water supplier” means a water supplier,
18 either publicly or privately owned, that provides more than 3,000
19 acre-feet of water annually at wholesale for potable municipal
20 purposes.

21 SEC. 3. Chapter 2.5 (commencing with Section 10608.14) is
22 added to Part 2.55 of Division 6 of the Water Code, to read:

23
24 **Chapter 2.5. Nonfunctional Turf**
25

26 10608.14. (a) The use of potable water for the irrigation of
27 nonfunctional turf located on commercial, industrial, municipal,
28 institutional, and multifamily residential properties is prohibited
29 as of the following dates:

30 (1) All properties owned or leased by the Department of General
31 Services, beginning January 1, 2026.

32 (2) All commercial, industrial, municipal, and institutional
33 properties, except those specified in paragraph (4), beginning
34 January 1, 2027.

35 (3) All multifamily residential properties, except those specified
36 in paragraph (4), beginning January 1, 2028.

37 (4) All multifamily residential affordable housing properties
38 and all municipal properties in a disadvantaged community,
39 beginning January 1, 2029.

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1 (b) The board may extend the compliance date for certain
2 persons, institutions, and businesses by regulation.

3 (c) The board shall develop and adopt regulations no later than
4 July 1, 2025, that shall establish all of the following:

5 (1) Allowances for compliance extensions, including economic
6 hardship, critical business need, and any other categories the board
7 determines are essential to public health and safety.

8 (2) Methods of compliance certification.

9 (3) Reporting requirements for an urban water supplier and
10 public water system.

11 (d) Regulations governing the terms and conditions of water
12 service adopted by urban retail water suppliers shall include the
13 requirements of subdivision (a) no later than January 1, 2026.

14 (e) (1) An owner of commercial, industrial, municipal, and
15 institutional property with more than 5,000 square feet of irrigated
16 area shall certify, commencing June 30, 2028, and every three
17 years thereafter, that their property is in compliance with the
18 requirements of this chapter.

19 (2) An owner of a multifamily residential property with more
20 than 5,000 square feet of irrigated area shall certify, commencing
21 June 30, 2029, and every three years thereafter, that their property
22 is in compliance with the requirements of this chapter.

23 (f) Noncompliance by a person or entity with this chapter or
24 regulations adopted thereunder shall be subject to civil liability
25 and penalties set forth in Section 1846, or to civil liability and
26 penalties imposed by an urban retail water supplier pursuant to a
27 locally adopted regulation.

28 (g) An urban water supplier, city, county, or city and county
29 may enforce the provisions of this chapter.

30 (h) The Public Utilities Commission shall, through a rulemaking
31 proceeding, or decisions in general rate cases, before January 1,
32 2026, set penalty amounts for investor-owned water companies
33 that violate the requirements of this chapter.

34 (i) (1) Beginning July 1, 2028, the board, in collaboration with
35 the department, and with assistance from urban water suppliers,
36 shall annually conduct a compliance audit for two of the state's
37 hydrologic regions, so that all of the state's hydrologic regions
38 receive an audit once every five years. The audit shall include all
39 of the following:

1 (A) Visual inspections of commercial and industrial properties
2 known to have large lots and significant landscaping.

3 (B) Visual inspections of nonresidential properties with
4 extraordinarily high water use.

5 (C) Visual inspections of addresses that have been the subject
6 of water waste complaints in the past year.

7 (2) Visual inspections shall be conducted without entry to
8 nonpublic properties or premises.

9 (3) The board and the department shall post the audit data on
10 their respective internet websites, including both of the following:

11 (A) Number of inspections conducted by property type.

12 (B) Number of violations identified.

13 (4) An urban water supplier shall provide to the board
14 information to facilitate compliance audits through the reporting
15 mechanism established pursuant to Section 116530 of the Health
16 and Safety Code.

17 (j) The department shall, using funds appropriated for water
18 conservation and integrated regional water management, prioritize
19 financial assistance for nonfunctional turf replacement to water
20 suppliers serving disadvantaged communities and to owners of
21 affordable housing.

22 (k) The department shall utilize the saveourwater.com internet
23 website and outreach campaign to provide information and
24 resources on converting nonfunctional turf to native vegetation.

25 (l) The department shall analyze and quantify how compliance
26 with this chapter supports the goal of reducing reliance on the
27 Sacramento-San Joaquin Delta as directed by Division 35
28 (commencing with Section 85000).

29 (m) The division shall, in consultation with the Department of
30 Education, disseminate information on native and drought-tolerant
31 plants that support vibrant ecosystems, including pollinators, in
32 schools serving kindergarten and grades 1 through 12.

33 (n) The division's vice president shall, no later than June 30,
34 2026, report to the Senate Committee on Environmental Quality
35 and the Assembly Committee on Water, Parks, and Wildlife on
36 progress in implementing this chapter.

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- 1 (o) The Governor's Office of Business and Economic
- 2 Development shall support small and minority-owned businesses
- 3 that provide services that advance compliance with this chapter.

O