

Introduced by Senator Simitian

December 1, 2008

~~An act to add Division 26.6 (commencing with Section 79600) to the Water Code, relating to financing a water quality, environmental enhancement, and water supply reliability program, by providing the funds necessary therefor through an election for the issuance and sale of bonds of the State of California and for the handling and disposition of those funds.~~ *An act to amend Section 29735 of, and to add Section 29740.1 to, the Public Resources Code, and to add Division 26.8 (commencing with Section 79850) to the Water Code, relating to the Sacramento-San Joaquin Delta.*

LEGISLATIVE COUNSEL'S DIGEST

SB 12, as amended, Simitian. Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2009.

(1) Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. The Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992 creates the Delta Protection Commission and requires the commission to prepare and adopt a comprehensive long-term resource management plan for specified lands within the Sacramento-San Joaquin Delta.

This bill would enact the Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2009. The bill would establish the Delta Ecosystem and Water Council. The council would be required to prepare and adopt

a plan referred to as the California Delta Ecosystem and Water Plan (plan) to advance the coequal goals of restoring the Delta ecosystem and creating a more reliable water supply in California. The council would be required to establish a goal for the adoption of the plan by December 1, 2010. If the plan is not completed by that date, the council would be required to adopt an interim strategic plan. The plan would be required to include specified components, including species protection requirements, Delta water flow and water quality requirements, and information relating to land use in the Delta.

The council would have the exclusive authority to determine the consistency of any project proposed or approved by a state agency or local government with the plan, and would be required to assume responsibility for any conservation or habitat management plan developed for the Delta, ensure that federal and state actions are consistent with the plan, receive and allocate funds to advance policies and programs related to the Delta, establish policies and procedures that ensure that the operations of water export systems are consistent with the plan, and take other action on behalf of the Delta. By authorizing the council to impose requirements on projects undertaken by local governments, the bill would impose a state-mandated local program.

The bill would authorize the council to impose a per-acre-foot fee on water diversions within the Delta watershed and a fee on any water conveyed through or around the Delta. The moneys generated by the imposition of the fee would be required to be deposited in the Delta Ecosystem and Water Fund, which would be established in the State Treasury. The moneys in the fund, upon appropriation by the Legislature to the council, would be required to be expended by the council for the exclusive purpose of carrying out the bill's provisions.

The bill would establish the California Delta Conservancy to implement the ecosystem restoration elements of the plan. The bill would establish the Delta Science and Engineering Board to carry out a Delta science and engineering program under the direction of the council.

The bill would revise the membership of the Delta Protection Commission to include one of the members of the Central Valley Flood Protection Board, or that member's sole designee. The bill would require the commission to extend invitations to specified federal agencies to participate in the activities of the commission in a nonvoting capacity. The bill would require the commission to revise its resource management plan to be consistent with the plan required to be adopted

by the council. The bill would require Delta counties, as defined, and the cities within those counties, to revise their general plans and submit the revised plans to the commission. By imposing requirements on those counties and cities with regard to the preparation of their general plans, the bill would impose a state-mandated local program. The commission would be required to review and certify the general plans of those counties and cities for consistency with its resource management plan and the plan adopted by the council.

(2) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Under existing law, various bond acts have been approved by the voters to provide funds for water projects, facilities, and programs. Under existing law, various state agencies administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta.~~

~~This bill would enact the Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement Act of 2009, which, if approved by the voters, would authorize, for the purposes of financing a water quality, environmental enhancement, and water supply reliability program, the issuance, pursuant to the State General Obligation Bond Law, of bonds in the amount of \$6,000,000,000. The bill would require the Secretary of State to submit the bond act to the voters at the November __, _____, statewide general election.~~

~~The bill would establish in state government the Delta Water and Land Use Authority, prescribe the composition of its board of directors, and grant to the authority a broad range of powers relating to the preservation of the Delta ecosystem and the delivery of a reliable state water supply. The bill would authorize the authority to contract to design, construct, and own one or more facilities to move water from the Sacramento River to federal and state pumping facilities on behalf of the State Water Project, the federal Central Valley Project, and local water agencies that can reasonably be served by those facilities.~~

The bill would authorize the authority to exercise the powers and duties of the Department of Water Resources with respect to the financing, design, construction, ownership, and operation of those facilities. The authority would succeed to the powers and duties of the California Bay-Delta Authority, which would cease to exist on the date on which the authority conducts its first meeting. The bill would authorize the authority to issue revenue bonds to finance the design, environmental review, permitting, and construction of those facilities. The bill would authorize the authority to impose a fee for the transmission of water through these facilities, and would continuously appropriate funds generated by that fee to the authority to repay the revenue bonds and to pay other costs, including costs associated with the operation and maintenance of the facility and the expenses of the authority.

The bill would require the authority to impose other fees, including a fee, not to exceed \$50 per acre-foot of water transmitted through the facilities, or otherwise pumped from the Delta, as specified, on federal and state contractors and affected local water agencies. The bill would authorize the authority to impose a fee on specified water users to mitigate impacts on Delta ecological functions caused by their diversions. The bill would require the funds generated by these fees to be deposited in the Clean Drinking Water, Water Quality Improvement, and Environmental Enhancement Fund, which the bill would establish. Funds generated by these fees would be continuously appropriated to the authority for an ecosystem restoration program. Proceeds generated from the issuance of general obligations bonds would be deposited in the fund. These proceeds would be continuously appropriated to the authority for capital outlay projects in accordance with the bill's provisions.

The bill would establish within the California Coastal Commission the Delta Watershed Conservancy. The conservancy would be required to implement projects and programs, within the watershed of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and the watershed of the Trinity River, to restore and enhance the bay-delta ecosystem and improve water quality. The bill would require the authority to adopt or reject each decision of the conservancy.

The bill would subject any approval of development by a city or county in specified zones of the Delta, and certain lands adjacent to the Delta, to review by the Delta Protection Commission. The commission would be prohibited from approving that development unless specified

requirements are met. The bill would require the authority to adopt or reject these land use decisions of the commission. Public agencies would be required to manage agricultural lands they own within the Delta in a specified manner.

The bill would provide that its provisions would only become operative if a specified measure is approved by the voters at the November __, ____ statewide general election.

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

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

1 SECTION 1. Section 29735 of the Public Resources Code is
2 amended to read:

3 29735. There is hereby created the Delta Protection
4 Commission consisting of ~~23~~ 24 members as follows:

5 (a) One member of the board of supervisors, or his or her
6 designee, of each of the five counties within the ~~delta~~ Delta whose
7 supervisorial district is within the primary zone shall be appointed
8 by the board of supervisors of the county.

9 (b) (1) Three elected city council members shall be selected
10 and appointed by city selection committees, from regional and
11 area councils of government, one in each of the following areas:

12 (A) One from the north ~~delta~~ Delta, consisting of the Counties
13 of Yolo and Sacramento.

14 (B) One from the south ~~delta~~ Delta, consisting of the County
15 of San Joaquin.

16 (C) One from the west ~~delta~~ Delta, consisting of the Counties
17 of Contra Costa and Solano.

18 (2) A city council member may select a designee for purposes
19 of paragraph (1).

20 (c) (1) One member each from the board of directors of five
21 different reclamation districts that are located within the primary
22 zone who are residents of the ~~delta~~ Delta, and who are elected by
23 the trustees of reclamations districts within the following areas:

24 (A) Two members from the area of the North Delta Water
25 Agency as described in Section 9.1 of the North Delta Water
26 Agency Act (Chapter 283 of the Statutes of 1973), provided at
27 least one member is also a member of the Delta Citizens Municipal
28 Advisory Council.

- 1 (B) One member from the west-~~delta~~ *Delta* consisting of the
2 area of Contra Costa County within the-~~delta~~ *Delta*.
- 3 (C) One member from the area of the Central Delta Water
4 Agency as described in Section 9.1 of the Central Delta Water
5 Agency Act (Chapter 1133 of the Statutes of 1973).
- 6 (D) One member from the area of the South Delta Water Agency
7 as described in Section 9.1 of the South Delta Water Agency Act
8 (Chapter 1089 of the Statutes of 1973).
- 9 (2) Each reclamation district may nominate one director to be
10 a member. The member from an area shall be selected from among
11 the nominees by a majority vote of the reclamation districts in that
12 area. The member may select a designee for this purpose. For
13 purposes of this section, each reclamation district shall have one
14 vote. The north-~~delta~~ *Delta* area shall conduct separate votes to
15 select each of its two members.
- 16 (d) The Director of Parks and Recreation, or the director's sole
17 designee.
- 18 (e) The Director of Fish and Game, or the director's sole
19 designee.
- 20 (f) The Secretary of Food and Agriculture, or the secretary's
21 sole designee.
- 22 (g) The executive officer of the State Lands Commission, or
23 the executive officer's sole designee.
- 24 (h) The Director of Boating and Waterways, or the director's
25 sole designee.
- 26 (i) The Director of Water Resources, or the director's sole
27 designee.
- 28 (j) The public member of the California Bay-Delta Authority
29 who represents the-~~delta~~ *Delta* region or his or her designee.
- 30 (k) (1) The Governor shall appoint three members and three
31 alternates from the general public who are-~~delta~~ *Delta* residents
32 or-~~delta~~ *Delta* landowners *of the Delta*, as follows:
- 33 (A) One member and one alternate shall represent the interests
34 of production agriculture with a background in promoting the
35 agricultural viability of-~~delta~~ *Delta* farming.
- 36 (B) One member and one alternate shall represent the interests
37 of conservation of wildlife and habitat resources of the-~~delta~~ *Delta*
38 region and ecosystem *fo the Delta*.

1 (C) One member and one alternate shall represent the interests
2 of outdoor recreational opportunities, including, but not limited
3 to, hunting and fishing.

4 (2) An alternate may serve in the absence of a member.

5 (l) *A member of the Central Valley Flood Protection Board, as*
6 *designated by the board or that member’s sole designee.*

7 *SEC. 2. Section 29740.1 is added to the Public Resources Code,*
8 *to read:*

9 *29740.1. The commission shall invite the United States Army*
10 *Corps of Engineers, United States Fish and Wildlife Service, United*
11 *States Bureau of Reclamation, and other appropriate federal*
12 *agencies to participate in the activities of the commission in a*
13 *nonvoting capacity to better assess and coordinate flood protection,*
14 *water supply, and ecosystem protection issues.*

15 *SEC. 3. Division 26.8 (commencing with Section 79850) is*
16 *added to the Water Code, to read:*

17
18 *DIVISION 26.8. SACRAMENTO-SAN JOAQUIN RIVER*
19 *DELTA, CLEAN DRINKING WATER, WATER SUPPLY*
20 *SECURITY, AND ENVIRONMENTAL IMPROVEMENT ACT OF*
21 *2009*

22
23 *CHAPTER 1. GENERAL PROVISIONS*
24

25 *79850. This division shall be known and may be cited as the*
26 *Sacramento-San Joaquin River Delta, Clean Drinking Water,*
27 *Water Supply Security, and Environmental Improvement Act of*
28 *2009.*

29 *79851. The Legislature finds and declares all of the following:*

30 (a) *The Sacramento-San Joaquin River Delta is a web of*
31 *channels, natural habitat, and reclaimed islands at the confluence*
32 *of the Sacramento and San Joaquin Rivers. It forms the eastern*
33 *portion of the wider San Francisco Bay Estuary, which also*
34 *includes the San Francisco, San Pablo, and Suisun Bays. The Delta*
35 *collects water from California’s largest watershed, which*
36 *encompasses roughly 45 percent of the state’s surface area and*
37 *stretches from the eastern slopes of the coastal ranges to the*
38 *western slopes of the Sierra Nevada and Cascade mountain ranges.*

1 (b) *The Delta supports a unique and irreplaceable combination*
2 *of environmental and economic values, including all of the*
3 *following:*

4 (1) *The San Francisco Bay/Sacramento-San Joaquin Delta*
5 *Estuary is a unique ecosystem. The Delta and the adjacent Suisun*
6 *Marsh, an integral part of the Delta ecosystem, provide habitat*
7 *for 700 species, including 12 species listed under either the federal*
8 *or state endangered species laws. Eighty percent of the state's*
9 *commercial fishery species live in or migrate through the Delta.*
10 *It is a major stopping point for hundreds of thousands of migrating*
11 *birds along the Pacific Flyway. The Suisun Marsh alone contains*
12 *more than 10 percent of California's remaining wetlands.*

13 (2) *Two-thirds of the state's residents rely on the Delta for part*
14 *or all of their drinking water. One-sixth of all irrigated lands in*
15 *the nation are located in this watershed and water exported from*
16 *the Delta irrigates 45 percent of the fruits and vegetables produced*
17 *in the United States. California's water supply is limited and*
18 *demand will grow as the state's population increases. Despite*
19 *policies to encourage more efficient water use, residential use*
20 *measured in gallons per capita per day remains unchanged since*
21 *the 1970s and agriculture uses the same volumes of water as in*
22 *the 1970s though irrigated lands have shifted to orchards,*
23 *vineyards, and other permanent crops.*

24 (3) *Delta lands have contributed significantly to the agricultural*
25 *economy in California. Supporting a population of about 470,000,*
26 *the cities, towns, and settlements within the Delta are of significant*
27 *historical, cultural, and economic value.*

28 (4) *Three state highways, three rail lines, and two deepwater*
29 *channels cross the Delta and the Delta serves two inland ports.*
30 *Most of these transportation corridors serve other areas of the*
31 *state.*

32 (5) *Hundreds of gas lines, five high voltage lines, and critical*
33 *water supply aqueducts that serve public health and safety needs*
34 *cross the Delta, including multiple Delta islands. The Delta is also*
35 *home to numerous underground natural gas storage sites.*

36 (6) *The Delta's 635 miles of boating waterways are served by*
37 *138 marinas containing 11,700 in water boat slips and dry storage*
38 *for 5,500 boats. In 2000, there were an estimated 6.4 million*
39 *boating-related visitor days, with 2.13 million boating trips. Other*
40 *major recreational activities in the Delta include fishing,*

1 waterfowl, and upland game bird hunting, wildlife viewing, bird
2 watching, and windsurfing.

3 (7) The Delta is the natural outlet for a 42,500 square mile
4 watershed that includes the central valley and the western slope
5 of the Sierra Nevada from Fresno to north of Mount Shasta. As
6 such, it is the main conduit for flood waters to flow out to the
7 ocean. The Delta itself is protected by extensive, but fragile, flood
8 management facilities, including about 1,100 miles of levees in
9 the Delta and about 230 miles of levees in the Suisun Marsh. These
10 levees protect about 65 islands and tracts in the Delta. Most of
11 these levee-protected lands are below sea level; some areas are
12 as much as 25 feet below sea level.

13 (c) The Delta cannot sustain important environmental and
14 economic values under current conditions. All of these values
15 either are already in significant decline or are at risk of sudden
16 failure. Several factors are intensifying the problems, including
17 all of the following:

18 (1) Land subsidence, sea level rise, and changes in climate make
19 Delta levees increasingly vulnerable to failure from earthquakes,
20 floods, and other causes. Over the next 50 years, there is a
21 two-thirds chance of a catastrophic levee failure in the Delta,
22 leading to flooding of multiple islands and the intrusion of
23 seawater. The Department of Water Resources estimates that a
24 large earthquake near the Delta would cause major interruptions
25 in water supplies for southern California, the San Joaquin Valley,
26 and the San Francisco Bay area, as well as disruptions of power,
27 road, and shipping lines, costing the state's economy as much as
28 \$40 billion. These failures also would create major environmental
29 disruptions and local flooding risks.

30 (2) Endangered species and fisheries have continued to decline
31 in the Delta and disruptive nonnative species continue to invade.
32 In the fall of 2004, routine fish surveys registered sharp declines
33 in the numbers of several open-water (pelagic) species, including
34 the Delta smelt, already listed as threatened under the federal and
35 state endangered species laws. Subsequent surveys have confirmed
36 the trend, raising concerns that the Delta smelt, which are
37 sometimes seen as an indicator of ecosystem health in the Delta,
38 risks extinction if a solution is not found quickly. In the winter of
39 2008, salmon populations reliant on the Delta declined

1 precipitously, contributing to closure of the salmon fishery that
2 year.

3 (3) Delta water quality remains at risk from salts entering from
4 the ocean and the central valley's agricultural drainage, as well
5 as from pesticides and metals coming from agricultural and urban
6 lands. Chronic toxicants continue to be a problem, and episodic
7 toxic events from urban and agricultural applications are also a
8 major problem.

9 (4) Organic soils in the Delta contribute precursors for
10 trihalomethanes, a known carcinogen. Removing trihalomethanes
11 from drinking water is very costly.

12 (5) Regional population and economic growth have increased
13 pressure to urbanize Delta lands near major transportation routes
14 and urban centers. This "hardening" of Delta lands simultaneously
15 raises the costs of flood management and reduces the flexibility
16 of land management options. Unlike most other activities in the
17 Delta, urbanization is generally irreversible. Additionally,
18 urbanization is self-accelerating. Urbanization in one location
19 significantly increases the value of adjacent lands. This, coupled
20 with declining profit margins for farming, will increase the
21 pressure to convert farmlands to subdivisions. This shift will come
22 at the expense of habitat protection and other services, such as
23 water quality and water supply.

24 (d) It is necessary to implement the recommendations of the
25 Delta Vision Blue Ribbon Task Force to develop a durable vision
26 for sustainable management of the Delta with the goal of managing
27 the Delta over the long term to restore and maintain identified
28 functions and values that are determined to be important to the
29 environmental quality of the Delta and the economic and social
30 well-being of the people of the state.

31 (e) To achieve long-term environmental sustainability and
32 protect California's economy, it is necessary to codify the coequal
33 goals of restoring the Delta ecosystem and creating a more reliable
34 water supply for California. To achieve the desired coequal goals,
35 strong participation of local, state, and federal agencies is
36 necessary to better integrate their responsibilities and capacities
37 into an effective Delta plan.

38 (f) The State of California must recognize and enhance the
39 unique cultural, recreational, and agricultural values of the

1 *California Delta as an evolving place, an action critical to*
2 *achieving the coequal goals.*

3 *(g) The ecosystem of the Delta must be restored as the heart of*
4 *a healthy estuary.*

5 *(h) Any effort to balance the coequal goals will require a*
6 *sustained effort promoting statewide water conservation, efficiency,*
7 *and sustainable use of California's natural resources.*

8 *(i) It shall be the policy of the State of California to build*
9 *facilities to improve the existing water conveyance system and*
10 *expand statewide storage, and operate both to achieve the coequal*
11 *goals.*

12 *(j) It shall be the policy of the State of California to reduce risks*
13 *to people, property, and state interests in the Delta by means of*
14 *effective emergency preparedness, appropriate land uses, and*
15 *strategic levee investments.*

16 *(k) To achieve the coequal goals the State of California must*
17 *establish a new governance structure with the authority,*
18 *responsibility, accountability, science support, and secure funding*
19 *to achieve these goals.*

20 *(l) Land use decisions in the Delta should be based on public*
21 *safety.*

22 *(m) Despite the enactment of the*
23 *Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992,*
24 *development has continued to expand in the Delta, potentially*
25 *threatening state interests and heightening safety risks in the*
26 *region. Substantial population increases in the region are projected*
27 *for the coming decades, increasing urbanization pressures in both*
28 *the secondary zone and the primary zone. In addition to increasing*
29 *flood risks, urban development outside of the primary zone can*
30 *also foreclose critical future ecosystem revitalization and climate*
31 *change adaptation opportunities, as well as limit improvements*
32 *to the existing water export system. Active floodplains are critical*
33 *ecosystem revitalization sites, and should not be cut off by levees*
34 *protecting new development. Lands just above current tidal*
35 *elevation are crucial sites to accommodate long-range sea level*
36 *rise, and should be conserved for that reason.*

37 *79852. By enacting this division, it is the intent of the*
38 *Legislature to facilitate the implementation of a program for the*
39 *sustainable management of the Delta ecosystem and to establish*
40 *a governance structure that will coordinate efforts across state*

1 agencies to develop a legally enforceable California Delta
2 Ecosystem and Water Plan.

3 79853. Unless the context requires otherwise, the definitions
4 set forth in this section govern the construction of this division:

5 (a) “Acquisition” means the acquisition of a fee interest or any
6 other interest, including easements, leases, and development rights.

7 (b) “Adaptive management” means a method of constructing
8 and operating physical facilities in a manner that maximizes
9 operational flexibility in response to changing physical and
10 biological conditions.

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

13 (d) “Bay Delta Conservation Plan” means any natural
14 communities conservation plan or habitat conservation plan being
15 developed by the Natural Resources Agency through a consortium
16 of public agencies and nonprofit organizations to protect and
17 restore endangered and threatened species and their habitat in
18 the Delta.

19 (e) “Board,” or “board of directors,” or “board members”
20 means the board of directors of the council.

21 (f) “CALFED” means the consortium of state and federal
22 agencies with management and regulatory responsibilities in the
23 Bay-Delta.

24 (g) “CALFED Bay-Delta Program” means the undertaking by
25 CALFED to develop and implement, by means of the final
26 programmatic environmental impact statement/environmental
27 impact report, the preferred programs, actions, projects, and
28 related activities that will provide solutions to identified problem
29 areas related to the Bay-Delta ecosystem, including, but not limited
30 to, the Bay-Delta and its tributary watersheds.

31 (h) “California Delta Conservancy” or “conservancy” means
32 the conservancy established pursuant to Section 79890.

33 (i) “California Environmental Quality Act” means the
34 California Environmental Quality Act as set forth in Division 13
35 (commencing with Section 21000) of the Public Resources Code.

36 (j) “Delta” means the area of the Sacramento-San Joaquin
37 Delta that is defined in Section 12220, and includes the Yolo
38 Bypass and the Suisun Marsh.

39 (k) “Delta counties” mean the Counties of Contra Costa,
40 Solano, Yolo, Sacramento, and San Joaquin.

1 (l) “Delta Ecosystem and Water Council” or “council” means
2 the council established by Section 79860.

3 (m) “Delta Ecosystem and Water Plan” or “plan” means a
4 plan developed pursuant to this division by the council.

5 (n) “Delta Protection Commission” or “commission” means
6 the commission established pursuant to Section 29735 of the Public
7 Resources Code.

8 (o) “Delta watershed” means ____.

9 (p) “Department” means the Department of Water Resources.

10 (q) “Fund” means the Delta Ecosystem and Water Fund
11 established by Section 79885.

12 (r) “Nonprofit organization” means any nonprofit corporation
13 formed pursuant to the Nonprofit Public Benefit Corporation Law
14 (Part 2 (commencing with Section 5110) of Division 2 of Title 1
15 of the Corporations Code) and qualified under Section 501(c)(3)
16 of the United States Internal Revenue Code.

17 (s) “Public water agency” means a public entity, as defined in
18 Section 514, that provides water service, as defined in Section 515.

19

20 *CHAPTER 2. DELTA ECOSYSTEM RESTORATION AND WATER*
21 *SUPPLY RELIABILITY*

22

23 79855. The Legislature finds and declares all of the following:

24 (a) The coequal goals of restoring the Delta ecosystem and
25 creating a more reliable water supply in California are the
26 foundation of water and ecosystem policymaking.

27 (b) All state agencies with significant responsibilities relating
28 to the Delta should implement their statutory duties in a manner
29 that advances these coequal goals.

30 (c) All water project operational agreements, contracts for
31 water use, water right permits, and financial agreements that
32 impact the Delta should reflect and promote these coequal goals.

33

34 *CHAPTER 3. STATEWIDE WATER CONSERVATION, EFFICIENCY,*
35 *AND SUSTAINABLE USE*

36

37 79858. The Legislature finds and declares that the following
38 policies should be incorporated into state planning, programmatic,
39 and regulatory actions:

1 (a) *The reduction of urban, residential, industrial, and*
2 *agricultural water demand through improved water use efficiency*
3 *and conservation, starting by achieving a statewide 20 percent*
4 *per capita reduction in water use by 2020.*

5 (b) *The improvement of statewide water use efficiency and*
6 *conservation by use of tiered pricing, incentives and grants, basin*
7 *water planning for both surface and groundwater, educational*
8 *programs, and a water “loading order” that gives first priority to*
9 *conservation and efficiency improvements.*

10 (c) *The reduction of urban per capita water use over the*
11 *long-term by requiring water agencies to reduce water use per*
12 *capita at least sufficiently to offset population growth and to*
13 *require communities to include all available water use efficiencies*
14 *in land use plans and actions.*

15 (d) (1) *The establishment of a statewide agricultural water*
16 *conservation target by 2010 of at least an estimated 800,000*
17 *acre-feet of agricultural water conservation.*

18 (2) *Requiring the submission of water management plans to the*
19 *department, on and after 2011 and every five years thereafter, by*
20 *agricultural water districts using more than 3,000 acre-feet of*
21 *groundwater or surface water, and by counties that provide*
22 *regulatory oversight for individual agricultural groundwater users*
23 *that are not within established water districts.*

24 (3) *Requiring the state board to use its authority to determine*
25 *reasonable use of water over the coming decades to evolve away*
26 *from the generally accepted practices of diverting surface water*
27 *for irrigated agriculture, considering climatic and agronomic*
28 *factors in making these ongoing determinations.*

29 (e) *The achievement of increased water supply reliability*
30 *through the maintenance of diverse regional water supply*
31 *portfolios, and by establishing a statewide target to recycle 1.5*
32 *million acre-feet of water annually by 2020, encouraging local*
33 *water agencies to at least triple the current statewide capacity for*
34 *generating new water supplies through ocean and brackish water*
35 *desalination by 2020, requiring the state board to establish goals*
36 *by 2015 for infiltration and direct use of urban stormwater runoff*
37 *throughout the Delta watershed and its export areas, requiring*
38 *agencies to ensure that accurate and timely information is collected*
39 *and reported on all surface water and groundwater diversions in*
40 *California by 2012, requiring that all water purveyors develop an*

1 *integrated contingency plan by 2015 in the event of Delta water*
2 *supply curtailments or drought, and establishing a regulatory*
3 *framework that encourages efficient and integrated management*
4 *of water resources at local, regional, and statewide levels.*

5
6 *CHAPTER 4. DELTA ECOSYSTEM AND WATER COUNCIL*
7

8 *79860. (a) The Delta Ecosystem and Water Council is hereby*
9 *established to advance the coequal goals of restoring the Delta*
10 *ecosystem and creating a more reliable water supply in California.*

11 *(b) (1) The board of directors of the council shall consist of*
12 *seven members. The board members shall be appointed as follows:*

13 _____
14 *(2) The initial term of office of each member of the board shall*
15 *be two, four, or six years, as specified in subdivision (c), and all*
16 *subsequent terms shall be eight years.*

17 *(3) No member of the board shall serve two consecutive terms,*
18 *but a member may be reappointed to the board after a period of*
19 *two years following the end of his or her term.*

20 *(4) Notwithstanding paragraph (3), those members of the board*
21 *that serve an initial term of two or four years may be immediately*
22 *appointed to a subsequent full eight-year term.*

23 *(c) At the first meeting of the board, the members shall classify*
24 *themselves by lot into three classes. One class shall have three*
25 *members and the other two classes shall have two members each.*
26 *For the class that has three members, the terms of office shall be*
27 *two years. The second class, composed of two members, shall serve*
28 *four years. The third class, composed of two members, shall serve*
29 *six years. Thereafter, the terms of all succeeding members shall*
30 *be eight years.*

31 *(d) Any vacancy shall be filled by the appointing authority within*
32 *60 days. If the term of a board member expires, and no successor*
33 *is appointed within the allotted timeframe, the existing member*
34 *may serve up to 180 days beyond the expiration of his or her term.*

35 *(e) The Governor shall appoint a chairperson from among the*
36 *board members, who shall serve for not more than four years.*

37 *(f) The council shall meet once a month in a public forum. At*
38 *least two meetings each year shall take place within the Delta.*

39 *(g) The Commissioner of the United States Bureau of*
40 *Reclamation, the Director of the United States Fish and Wildlife*

1 *Service, the Director of the National Marine Fisheries Service,*
2 *and the Director of the United States Geological Service, if those*
3 *federal officials wish to participate, as well as the director of the*
4 *department and the Director of Fish and Game, shall be nonvoting*
5 *ex officio members of the board of directors.*

6 79861. *The chairperson shall serve full time. Other members*
7 *shall serve one-third time. The board of directors may select a*
8 *vice chairperson and other officers determined to be necessary.*

9 79862. (a) *Each member of the board shall receive the salary*
10 *provided for in Section 11564 of the Government Code.*

11 (b) *The members of the board of directors shall be reimbursed*
12 *for expenses necessarily incurred in the performance of official*
13 *duties.*

14 (c) *The board of directors shall appoint an executive director*
15 *who shall serve full time.*

16 (d) *The council shall hire employees necessary to carry out the*
17 *functions of the agency.*

18 (e) *The number of employees and qualifications of those*
19 *employees shall be determined by the council, subject to the*
20 *availability of funds.*

21 (f) *The salary of each employee of the council shall be*
22 *determined by the State Personnel Board, and shall reflect the*
23 *duties and responsibilities of the position.*

24 (g) *All persons employed by the council are state employees,*
25 *subject to the duties, responsibilities, limitations, and benefits of*
26 *the state.*

27 79863. *Board members shall be selected with diverse expertise*
28 *and perspectives, and include policy and resource experts, strategic*
29 *problem solvers, and individuals having success in resolving*
30 *multiinterest conflicts.*

31 79864. *The headquarters of the agency shall be located in*
32 *Sacramento.*

33

34 *CHAPTER 5. MISSION, DUTIES, AND RESPONSIBILITIES OF THE*
35 *DELTA ECOSYSTEM AND WATER COUNCIL*

36

37 79870. *The council shall do all of the following:*

38 (a) *Prepare and adopt a plan referred to as the California Delta*
39 *Ecosystem and Water Plan that incorporates the plans of other*

1 agencies, as appropriate, to carry out the requirements of this
2 division.

3 (b) The council shall have exclusive authority to determine the
4 consistency of any project proposed or approved by a state agency
5 or local government with the plan adopted pursuant to this division.

6 (c) Assume responsibility for any conservation or habitat
7 management plan developed for the Delta by the state or federal
8 government.

9 (d) Ensure that federal and state actions are consistent with the
10 plan.

11 (e) Participate as a trustee agency pursuant to Division 13
12 (commencing with Section 21000) of the Public Resources Code.

13 (f) Determine the consistency of major water, road, railroad,
14 utility, and levee infrastructure projects in the Delta with the plan
15 and communicate that determination to the responsible agencies.

16 (g) Assess policies applied outside the Delta that are critical to
17 meeting goals of this division and convey the results of that
18 assessment to the responsible agency.

19 (h) Work with the Delta Science and Engineering Board to adopt
20 sound principles of adaptive management.

21 (i) Receive and allocate funds to advance policies and programs
22 related to the Delta.

23 (j) Address environmental justice concerns with regard to the
24 implementation of the plan and regarding future Delta
25 decisionmaking.

26 (k) Empanel a public advisory group of stakeholders to advise
27 and make formal recommendations to the council, and to issue a
28 public biennial report on the activities of the council.

29 (l) Adopt procedures to facilitate use of alternative approaches
30 to dispute resolution, such as joint factfinding and arbitration to
31 reduce reliance on litigation and the courts.

32 (m) Exercise the power to sue to ensure compliance with the
33 plan.

34 (n) Establish policies and procedures that ensure that day-to-day
35 operations of water export systems are consistent with the plan.

36 79871. (a) The council shall prepare on or before August 1,
37 2010, a schedule for preparing and adopting the plan.

38 (b) The council shall prepare a list of all applicable legal
39 requirements, including requirements relating to federal and state

1 *endangered species laws, that pertain to the Delta for*
2 *incorporation into the plan.*

3 *(c) The council shall commence the preparation of the plan on*
4 *or before September 2010, consistent with the procedural and*
5 *substantive requirements of the federal Coastal Zone Management*
6 *Act of 1972 (16 U.S.C. Sec. 1451 et seq.).*

7 *(d) The council shall appoint persons to serve on the Delta*
8 *Science and Engineering Board on or before September 1, 2010,*
9 *and direct the work of the Delta Science and Engineering Program.*

10 *(e) Coordinate with stakeholders as well as local, state, and*
11 *federal agencies.*

12 *(f) Seek the advice of the council's public advisory group to*
13 *enhance stakeholder participation and actively address*
14 *environmental justice concerns.*

15 *(g) Establish a goal for the adoption of the plan by December*
16 *1, 2010.*

17 *(h) If the plan is not adopted by December 1, 2010, the council*
18 *shall adopt an interim strategic plan.*

19 *(i) Identify and address, by December 1, 2010, any*
20 *inconsistencies between the state board's water quality control*
21 *plans and the plan or the interim strategic plan.*

22 *(j) Review, and if necessary amend, the plan at least every five*
23 *years.*

24

25 *CHAPTER 6. DELTA ECOSYSTEM AND WATER PLAN*

26

27 *79880. (a) The plan shall be prepared in order to achieve the*
28 *coequal goals of Delta Vision. The plan shall build upon other*
29 *plans, modifying and extending those plans as needed to meet the*
30 *requirements of this division. Those other plans include, but are*
31 *not limited to, the ecosystem restoration program being developed*
32 *by the Department of Fish and Game, the land use and resource*
33 *management plan developed by the Delta Protection Commission,*
34 *any local habitat conservation plan within the Delta, the Suisun*
35 *Marsh plan under development, the provisions of the California*
36 *Water Plan that address reliable water supply being developed by*
37 *the department, and the conservation program resulting from the*
38 *Bay Delta Conservation Plan.*

1 (b) Those persons responsible for implementing the plans
2 described in subdivision (a) shall do so in a manner that is
3 consistent with the plan adopted pursuant to this division.

4 79881. The plan shall meet all of the following requirements:

5 (a) Include any species protection requirements that impact
6 Delta resources.

7 (b) Include requirements for water flow and water quality in
8 the Delta that achieve the coequal goals.

9 (c) Identify state land use interests in the Delta, especially those
10 that impact the ecosystem, water supply reliability, and flood
11 concerns.

12 (d) Establish principles and procedures for adaptive
13 management.

14 (e) Establish requirements for the modeling, data collection,
15 management, monitoring, analysis, and interpretation to support
16 policy decisionmaking.

17 (f) Adopt a model designed to maximize flexibility and resiliency
18 in managing the Delta.

19 (g) Establish a detailed financing plan that identifies costs,
20 benefits, and revenue sources.

21 (h) Serve as a foundational document for a programmatic
22 environmental impact statement or environmental impact report
23 for projects in the Delta that require permits in accordance with
24 the National Environmental Policy Act (42 U.S.C. Sec. 4321 et
25 seq.) and the California Environmental Quality Act.

26 (i) Optimize the use of the CALFED Programmatic Record of
27 Decision dated August 28, 2000, and the Coastal Zone
28 Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.) to maximize
29 participation of federal agencies in implementation of the plan.

30 79882. (a) The Legislature finds and declares that the
31 preparation of the plan should reflect all of the following principles
32 or goals:

33 (1) Recognize and enhance the unique cultural, recreational,
34 and agricultural values of the Delta as an evolving place.

35 (2) Restore the Delta ecosystem as the heart of a healthy estuary.

36 (3) The construction of facilities to improve the existing water
37 conveyance system, to expand statewide storage facilities, and to
38 operate both the water conveyance system and statewide storage
39 facilities to achieve the coequal goals.

1 (4) *The reduction of risks to people, property, and state interests*
2 *in the Delta by means of effective emergency preparedness,*
3 *appropriate land uses, and strategic levee investments.*

4 (5) *The provision of adequate and reliable funding to carry out*
5 *this division.*

6 (b) *These principles and goals shall guide the financing*
7 *priorities of the council, the conservancy, the Delta Protection*
8 *Commission, and all related bodies, including the Delta Science*
9 *and Engineering Board.*

10 79883. *The council shall review and revise the plan every five*
11 *years. The review and revisions shall be based upon the adaptive*
12 *management program developed by the council and the Delta*
13 *Science and Engineering Board.*

14

15 *CHAPTER 7. DELTA ECOSYSTEM AND WATER FUND*

16

17 79885. (a) *The council may generate revenues and allocate*
18 *those revenues to pay for the work of the council, the conservancy,*
19 *the Delta Protection Commission, and related activities of the*
20 *Department of Fish and Game, the department, and the state board*
21 *in accordance with this division.*

22 (b) *The council may impose a per-acre-foot fee on water*
23 *diversions within the Delta watershed, and a fee on any water*
24 *conveyed through or around the Delta.*

25 (c) *In establishing fees under this chapter, the council shall be*
26 *subject to the following requirements:*

27 (1) *The amount of the fee shall not exceed the reasonable cost*
28 *of the program the fee supports.*

29 (2) *The fee shall not be imposed for adverse impacts that the*
30 *feepayer did not create or for benefits that the feepayer does not*
31 *obtain.*

32 (3) *The fee shall be equitably apportioned among feepayer*
33 *groups. Periodic adjustment mechanisms shall be established to*
34 *ensure that the fee is allocated fairly and that feepayers are not*
35 *paying disproportionately more than their impacts or benefits*
36 *justify.*

37 (d) *Moneys generated by the imposition of fees pursuant to*
38 *subdivision (b) shall be deposited in the Delta Ecosystem and*
39 *Water Fund, which is hereby established in the State Treasury.*

1 (e) *The moneys in the fund, upon appropriation by the*
2 *Legislature to the council, shall be expended for the exclusive*
3 *purpose of implementing this division.*

4 (f) *The council shall establish requirements that apply to public*
5 *and private entities that seek funding pursuant to this section.*
6 *These requirements shall include, but shall not be limited to,*
7 *provisions relating to the minimum amount of costs required to*
8 *be borne by a local agency, and the development of a completed*
9 *financial plan prior to the receipt of funds for the design and*
10 *construction of major capital projects.*

11 (g) *No funding shall be available pursuant to this section unless*
12 *the private or public entity agrees to carry out its projects in a*
13 *manner that is consistent with the plan and this division.*

14
15 *CHAPTER 8. THE CALIFORNIA DELTA CONSERVANCY*

16
17 79890. *The California Delta Conservancy is hereby established*
18 *to implement the ecosystem restoration elements of the plan.*

19 79891. (a) *The conservancy shall consist of 11 voting members,*
20 *including both local and state officials serving staggered terms,*
21 *with voluntary federal participation in nonvoting roles.*

22 (b) *The Governor shall appoint the following members:*

23 (1) *Five members, each of whom shall represent one of the Delta*
24 *counties who shall be selected from nominees advanced by the*
25 *Delta Protection Commission.*

26 (2) *Two public members with business or land trust experience.*

27 (c) *The Secretary for Natural Resources and the Director of*
28 *Finance shall serve as voting ex officio members.*

29 (d) *Two additional public members, one appointed by the Senate*
30 *Committee on Rules and one by the Speaker of the Assembly, shall*
31 *serve as nonvoting ex officio members.*

32 (e) *The Governor shall appoint the chairperson of the*
33 *conservancy.*

34 79892. *The conservancy shall do all of the following:*

35 (a) *Coordinate state ecosystem-related and urban waterfront*
36 *projects in the Delta.*

37 (b) *Acquire or manage land as needed to implement the plan.*

38 (c) *Enter into contracts to buy and sell land and other property,*
39 *and acquire property through the State Public Works Board. The*

1 *conservancy shall be exempt from approval processes of the*
2 *Department of General Services.*

3 *(d) Assume responsibility for publicly or privately owned lands*
4 *pursuant to voluntary agreements.*

5 *(e) Receive funding from the state, the council, or any other*
6 *source, and allocate those funds for purposes consistent with*
7 *policies and plans adopted by the council.*

8 *(f) Support appropriate recreation and ecosystem activities in*
9 *the Delta, including bolstering the local economy and National*
10 *Heritage Area designations consistent with the plan.*

11 *(g) Establish incentives for mutually beneficial mixtures of*
12 *traditional agriculture, habitat, and recreation, including*
13 *agri-tourism, wildlife-friendly agriculture practices, birdwatching,*
14 *and hunting.*

15

16 *CHAPTER 9. THE DELTA PROTECTION COMMISSION*

17

18 79895. *(a) To ensure state interests in the region are fully*
19 *protected over decades, all general plans of Delta counties and*
20 *cities within Delta counties shall be consistent with the plan.*

21 *(b) The Delta Protection Commission shall revise its resource*
22 *management plan to be consistent with the plan.*

23 *(c) The Delta Protection Commission shall review and certify*
24 *all general plans of Delta counties and cities within Delta counties*
25 *for consistency with its resource management plan and the plan.*

26 *(d) The Delta Protection Commission shall determine whether*
27 *any project approved by local governments within the primary*
28 *zone is consistent with the resource management plan and the*
29 *plan.*

30 *(e) It is the intent of the Legislature that the Delta Protection*
31 *Commission shall exercise appeal authority over selected portions*
32 *of the secondary zone once local plans are created for those areas.*
33 *Until those local plans are created, it is the intent of the Legislature*
34 *that the commission shall possess direct consistency determination*
35 *authority over development proposals in those areas.*

36 *(f) General plans of Delta counties and cities within those*
37 *counties shall be revised and submitted for consistency review to*
38 *the Delta Protection Commission upon completion. The council*
39 *may review local plans, or exercise consistency determination*

1 authority for individual projects in the primary or secondary zones,
2 at its discretion.

3

4 *CHAPTER 10. THE DELTA SCIENCE AND ENGINEERING BOARD*
5 *AND THE DELTA SCIENCE AND ENGINEERING PROGRAM*

6

7 79900. *The Legislature finds and declares all of the following:*

8 (a) *California should maintain a strong and consistent*
9 *investment in science and engineering important to the Delta.*
10 *There needs to be a more direct link between scientific investigation*
11 *and real-world management and policy.*

12 (b) *To achieve this, the council requires both a permanent*
13 *science and engineering program staff and an independent science*
14 *and engineering board that reviews actions undertaken by the*
15 *council.*

16 (c) *The program and the board should receive stable, adequate*
17 *funding.*

18 (d) *The science and engineering program should be a*
19 *replacement for, and a successor to, the successful CALFED*
20 *Independent Science Program, and a newly constituted delta*
21 *science and engineering board should replace the CALFED*
22 *Independent Science Board.*

23 79901. *The Delta Science and Engineering Board is hereby*
24 *established, consisting of between 12 and 20 individuals with*
25 *natural science, social science, engineering, and policy expertise*
26 *appointed by the council to a maximum of two five-year terms.*
27 *Lead scientists appointed by the council shall have a rotating*
28 *appointment of three years. To ensure independence, the current*
29 *practice in which lead scientists are formally engaged by an agency*
30 *other than the state, such as the United States Geological Survey,*
31 *should continue. The Delta Science and Engineering Board shall*
32 *respond to requests from the council or independently offer advice*
33 *on significant issues of its choosing.*

34 79902. *The council shall appoint persons to serve on the Delta*
35 *Science and Engineering Board. The Delta Science and*
36 *Engineering Board shall carry out a Delta science and engineering*
37 *program referred to as the Delta Science and Engineering Program*
38 *under the direction of the council. That program shall undertake*
39 *all of the following activities:*

1 (a) Research critical scientific issues of both the physical Delta
2 and elsewhere in the state relevant to Delta management.

3 (b) Organize, assess, and synthesize the best available science
4 for policymakers and the council.

5 (c) Review all major projects undertaken to advance the goals
6 of Delta Vision.

7 (d) Conduct independent science and engineering reviews of
8 the work of government agencies or consultant work upon the
9 request of the council, the conservancy, or other state agencies.

10 (e) Establish communication channels to effectively transmit
11 science and engineering results to broader and more diverse
12 audiences, coordinating with the council’s Public Advisory Group.

13 (f) Prepare discussion papers and interactive lectures.

14 SEC. 4. If the Commission on State Mandates determines that
15 this act contains costs mandated by the state, reimbursement to
16 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.

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, December 1, 2008 (JR11)**