

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE FEBRUARY 26, 2009

SENATE BILL

No. 12

Introduced by Senator Simitian

December 1, 2008

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~~ *each Delta county, as defined, and each city within*

a Delta county, to submit to the commission for review proposed amendments to make its general plan consistent with the commission's revised resource management plan. 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 bill would establish a permit process for projects, as defined, requiring the commission to review and determine whether any project proposed to be carried out or approved by a local government within the primary zone is consistent with both the commission's revised resource management plan and the plan, and requiring the commission, until a Delta county or a city within a Delta county in which a project is located has adopted general plan amendments to make the general plan consistent with the commission's revised resource management plan, to review and determine whether any project proposed to be carried out or approved by a local government within the secondary zone is consistent with both the commission's revised resource management plan and the plan. The bill would make any person who undertakes a development project within the commission's jurisdiction without securing a permit from the commission guilty of a misdemeanor, thereby imposing a state-mandated local program by creating a new crime. The commission council would be required authorized to review and certify the general plans of those counties and cities, and to review development projects in the primary and secondary zones 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.~~

~~(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 with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains~~

costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 SECTION 1. Section 29735 of the Public Resources Code is
2 amended to read:
3 29735. There is hereby created the Delta Protection
4 Commission consisting of 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 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, consisting of the Counties of
13 Yolo and Sacramento.
14 (B) One from the south Delta, consisting of the County of San
15 Joaquin.
16 (C) One from the west Delta, consisting of the Counties of
17 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, and who are elected by the
23 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.
29 (B) One member from the west Delta consisting of the area of
30 Contra Costa County within the Delta.
31 (C) One member from the area of the Central Delta Water
32 Agency as described in Section 9.1 of the Central Delta Water
33 Agency Act (Chapter 1133 of the Statutes of 1973).

1 (D) One member from the area of the South Delta Water Agency
2 as described in Section 9.1 of the South Delta Water Agency Act
3 (Chapter 1089 of the Statutes of 1973).

4 (2) Each reclamation district may nominate one director to be
5 a member. The member from an area shall be selected from among
6 the nominees by a majority vote of the reclamation districts in that
7 area. The member may select a designee for this purpose. For
8 purposes of this section, each reclamation district shall have one
9 vote. The north Delta area shall conduct separate votes to select
10 each of its two members.

11 (d) The Director of Parks and Recreation, or the director's sole
12 designee.

13 (e) The Director of Fish and Game, or the director's sole
14 designee.

15 (f) The Secretary of Food and Agriculture, or the secretary's
16 sole designee.

17 (g) The executive officer of the State Lands Commission, or
18 the executive officer's sole designee.

19 (h) The Director of Boating and Waterways, or the director's
20 sole designee.

21 (i) The Director of Water Resources, or the director's sole
22 designee.

23 (j) The public member of the California Bay-Delta Authority
24 who represents the Delta region or his or her designee.

25 (k) (1) The Governor shall appoint three members and three
26 alternates from the general public who are Delta residents or Delta
27 landowners of the Delta, as follows:

28 (A) One member and one alternate shall represent the interests
29 of production agriculture with a background in promoting the
30 agricultural viability of Delta farming.

31 (B) One member and one alternate shall represent the interests
32 of conservation of wildlife and habitat resources of the Delta region
33 and ecosystem ~~of~~ of the Delta.

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

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

38 (l) A member of the Central Valley Flood Protection Board, as
39 designated by the board or that member's sole designee.

1 SEC. 2. Section 29740.1 is added to the Public Resources Code,
2 to read:

3 29740.1. The commission shall invite the United States Army
4 Corps of Engineers, United States Fish and Wildlife Service,
5 United States Bureau of Reclamation, and other appropriate federal
6 agencies to participate in the activities of the commission in a
7 nonvoting capacity to better assess and coordinate flood protection,
8 water supply, and ecosystem protection issues.

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

11
12 DIVISION 26.8. SACRAMENTO-SAN JOAQUIN RIVER
13 DELTA, CLEAN DRINKING WATER, WATER SUPPLY
14 SECURITY, AND ENVIRONMENTAL IMPROVEMENT ACT
15 OF 2009

16
17 CHAPTER 1. GENERAL PROVISIONS

18
19 79850. This division shall be known and may be cited as the
20 Sacramento-San Joaquin River Delta, Clean Drinking Water, Water
21 Supply Security, and Environmental Improvement Act of 2009.

22 79851. The Legislature finds and declares all of the following:

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

32 (b) The Delta supports a unique and irreplaceable combination
33 of environmental and economic values, including all of the
34 following:

35 (1) The San Francisco Bay/Sacramento-San Joaquin Delta
36 Estuary is a unique ecosystem. The Delta and the adjacent Suisun
37 Marsh, an integral part of the Delta ecosystem, provide habitat for
38 700 species, including 12 species listed under either the federal or
39 state endangered species laws. Eighty percent of the state’s
40 commercial fishery species live in or migrate through the Delta.

1 It is a major stopping point for hundreds of thousands of migrating
2 birds along the Pacific Flyway. The Suisun Marsh alone contains
3 more than 10 percent of California’s remaining wetlands.

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

15 (3) Delta lands have contributed significantly to the agricultural
16 economy in California. Supporting a population of about 470,000,
17 the cities, towns, and settlements within the Delta are of significant
18 historical, cultural, and economic value.

19 (4) Three state highways, three rail lines, and two deepwater
20 channels cross the Delta and the Delta serves two inland ports.
21 Most of these transportation corridors serve other areas of the state.

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

26 (6) The Delta’s 635 miles of boating waterways are served by
27 138 marinas containing 11,700 in water boat slips and dry storage
28 for 5,500 boats. In 2000, there were an estimated 6.4 million
29 boating-related visitor days, with 2.13 million boating trips. Other
30 major recreational activities in the Delta include fishing, waterfowl,
31 and upland game bird hunting, wildlife viewing, bird watching,
32 and windsurfing.

33 (7) The Delta is the natural outlet for a 42,500 square mile
34 watershed that includes the central valley and the western slope
35 of the Sierra Nevada from Fresno to north of Mount Shasta. As
36 such, it is the main conduit for flood waters to flow out to the
37 ocean. The Delta itself is protected by extensive, but fragile, flood
38 management facilities, including about 1,100 miles of levees in
39 the Delta and about 230 miles of levees in the Suisun Marsh. These
40 levees protect about 65 islands and tracts in the Delta. Most of

1 these levee-protected lands are below sea level; some areas are as
2 much as 25 feet below sea level.

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

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

20 (2) Endangered species and fisheries have continued to decline
21 in the Delta and disruptive nonnative species continue to invade.
22 In the fall of 2004, routine fish surveys registered sharp declines
23 in the numbers of several open-water (pelagic) species, including
24 the Delta smelt, already listed as threatened under the federal and
25 state endangered species laws. Subsequent surveys have confirmed
26 the trend, raising concerns that the Delta smelt, which are
27 sometimes seen as an indicator of ecosystem health in the Delta,
28 risks extinction if a solution is not found quickly. In the winter of
29 2008, salmon populations reliant on the Delta declined
30 precipitously, contributing to closure of the salmon fishery that
31 year.

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

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

1 (5) Regional population and economic growth have increased
2 pressure to urbanize Delta lands near major transportation routes
3 and urban centers. This “hardening” of Delta lands simultaneously
4 raises the costs of flood management and reduces the flexibility
5 of land management options. Unlike most other activities in the
6 Delta, urbanization is generally irreversible. Additionally,
7 urbanization is self-accelerating. Urbanization in one location
8 significantly increases the value of adjacent lands. This, coupled
9 with declining profit margins for farming, will increase the pressure
10 to convert farmlands to subdivisions. This shift will come at the
11 expense of habitat protection and other services, such as water
12 quality and water supply.

13 (d) It is necessary to implement the recommendations of the
14 Delta Vision Blue Ribbon Task Force to develop a durable vision
15 for sustainable management of the Delta with the goal of managing
16 the Delta over the long term to restore and maintain identified
17 functions and values that are determined to be important to the
18 environmental quality of the Delta and the economic and social
19 well-being of the people of the state.

20 (e) To achieve long-term environmental sustainability and
21 protect California’s economy, it is necessary to codify the coequal
22 goals of restoring the Delta ecosystem and creating a more reliable
23 water supply for California. To achieve the desired coequal goals,
24 strong participation of local, state, and federal agencies is necessary
25 to better integrate their responsibilities and capacities into an
26 effective Delta plan.

27 (f) The State of California must recognize and enhance the
28 unique cultural, recreational, and agricultural values of the
29 California Delta as an evolving place, an action critical to achieving
30 the coequal goals.

31 (g) The ecosystem of the Delta must be restored as the heart of
32 a healthy estuary.

33 (h) Any effort to balance the coequal goals will require a
34 sustained effort promoting statewide water conservation, efficiency,
35 and sustainable use of California’s natural resources.

36 (i) It shall be the policy of the State of California to build
37 facilities to improve the existing water conveyance system and
38 expand statewide storage, and operate both to achieve the coequal
39 goals.

1 (j) It shall be the policy of the State of California to reduce risks
2 to people, property, and state interests in the Delta by means of
3 effective emergency preparedness, appropriate land uses, and
4 strategic levee investments.

5 (k) To achieve the coequal goals the State of California must
6 establish a new governance structure with the authority,
7 responsibility, accountability, science support, and secure funding
8 to achieve these goals.

9 (l) Land use decisions in the Delta should be based on public
10 safety.

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

26 79852. By enacting this division, it is the intent of the
27 Legislature to facilitate the implementation of a program for the
28 sustainable management of the Delta ecosystem and to establish
29 a governance structure that will coordinate efforts across state
30 agencies to develop a legally enforceable California Delta
31 Ecosystem and Water Plan.

32 79853. Unless the context requires otherwise, the definitions
33 set forth in this section govern the construction of this division:

34 (a) "Acquisition" means the acquisition of a fee interest or any
35 other interest, including easements, leases, and development rights.

36 (b) "Adaptive management" means a method of constructing
37 and operating physical facilities in a manner that maximizes
38 operational flexibility in response to changing physical and
39 biological conditions.

- 1 (c) “Bay-Delta” means the San Francisco Bay/Sacramento-San
2 Joaquin Delta.
- 3 (d) “Bay Delta Conservation Plan” means any natural
4 communities conservation plan or habitat conservation plan being
5 developed by the Natural Resources Agency through a consortium
6 of public agencies and nonprofit organizations to protect and
7 restore endangered and threatened species and their habitat in the
8 Delta.
- 9 (e) “Board,” or “board of directors,” or “board members” means
10 the board of directors of the council.
- 11 (f) “CALFED” means the consortium of state and federal
12 agencies with management and regulatory responsibilities in the
13 Bay-Delta.
- 14 (g) “CALFED Bay-Delta Program” means the undertaking by
15 CALFED to develop and implement, by means of the final
16 programmatic environmental impact statement/environmental
17 impact report, the preferred programs, actions, projects, and related
18 activities that will provide solutions to identified problem areas
19 related to the Bay-Delta ecosystem, including, but not limited to,
20 the Bay-Delta and its tributary watersheds.
- 21 (h) “California Delta Conservancy” or “conservancy” means
22 the conservancy established pursuant to Section 79890.
- 23 (i) “California Environmental Quality Act” means the California
24 Environmental Quality Act as set forth in Division 13 (commencing
25 with Section 21000) of the Public Resources Code.
- 26 (j) “Delta” means the area of the Sacramento-San Joaquin Delta
27 that is defined in Section 12220, and includes the Yolo Bypass
28 and the Suisun Marsh.
- 29 (k) “Delta counties” mean the Counties of Contra Costa, Solano,
30 Yolo, Sacramento, and San Joaquin.
- 31 (l) “Delta Ecosystem and Water Council” or “council” means
32 the council established by Section 79860.
- 33 (m) “Delta Ecosystem and Water Plan” or “plan” means a plan
34 developed pursuant to this division by the council.
- 35 (n) “Delta Protection Commission” or “commission” means the
36 commission established pursuant to Section 29735 of the Public
37 Resources Code.
- 38 (o) “Delta watershed” means ____.
- 39 (p) “Department” means the Department of Water Resources.

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

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

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

10

11 CHAPTER 2. DELTA ECOSYSTEM RESTORATION AND WATER
12 SUPPLY RELIABILITY

13

14 79855. The Legislature finds and declares all of the following:

15 (a) The coequal goals of restoring the Delta ecosystem and
16 creating a more reliable water supply in California are the
17 foundation of water and ecosystem policymaking.

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

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

24

25 CHAPTER 3. STATEWIDE WATER CONSERVATION, EFFICIENCY,
26 AND SUSTAINABLE USE

27

28 79858. The Legislature finds and declares that the following
29 policies should be incorporated into state planning, programmatic,
30 and regulatory actions:

31 (a) The reduction of urban, residential, industrial, and
32 agricultural water demand through improved water use efficiency
33 and conservation, starting by achieving a statewide 20 percent per
34 capita reduction in water use by 2020.

35 (b) The improvement of statewide water use efficiency and
36 conservation by use of tiered pricing, incentives and grants, basin
37 water planning for both surface and groundwater, educational
38 programs, and a water “loading order” that gives first priority to
39 conservation and efficiency improvements.

1 (c) The reduction of urban per capita water use over the
2 long-term by requiring water agencies to reduce water use per
3 capita at least sufficiently to offset population growth and to require
4 communities to include all available water use efficiencies in land
5 use plans and actions.

6 (d) (1) The establishment of a statewide agricultural water
7 conservation target by 2010 of at least an estimated 800,000
8 acre-feet of agricultural water conservation.

9 (2) Requiring the submission of water management plans to the
10 department, on and after 2011 and every five years thereafter, by
11 agricultural water districts using more than 3,000 acre-feet of
12 groundwater or surface water, and by counties that provide
13 regulatory oversight for individual agricultural groundwater users
14 that are not within established water districts.

15 (3) Requiring the state board to use its authority to determine
16 reasonable use of water over the coming decades to evolve away
17 from the generally accepted practices of diverting surface water
18 for irrigated agriculture, considering climatic and agronomic factors
19 in making these ongoing determinations.

20 (e) The achievement of increased water supply reliability
21 through the maintenance of diverse regional water supply
22 portfolios, and by establishing a statewide target to recycle 1.5
23 million acre-feet of water annually by 2020, encouraging local
24 water agencies to at least triple the current statewide capacity for
25 generating new water supplies through ocean and brackish water
26 desalination by 2020, requiring the state board to establish goals
27 by 2015 for infiltration and direct use of urban stormwater runoff
28 throughout the Delta watershed and its export areas, requiring
29 agencies to ensure that accurate and timely information is collected
30 and reported on all surface water and groundwater diversions in
31 California by 2012, requiring that all water purveyors develop an
32 integrated contingency plan by 2015 in the event of Delta water
33 supply curtailments or drought, and establishing a regulatory
34 framework that encourages efficient and integrated management
35 of water resources at local, regional, and statewide levels.

1 CHAPTER 4. DELTA ECOSYSTEM AND WATER COUNCIL

2
3 79860. (a) The Delta Ecosystem and Water Council is hereby
4 established to advance the coequal goals of restoring the Delta
5 ecosystem and creating a more reliable water supply in California.

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

8
9 (2) The initial term of office of each member of the board shall
10 be two, four, or six years, as specified in subdivision (c), and all
11 subsequent terms shall be eight years.

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

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

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

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

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

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

35 (g) The Commissioner of the United States Bureau of
36 Reclamation, the Director of the United States Fish and Wildlife
37 Service, the Director of the National Marine Fisheries Service,
38 and the Director of the United States Geological Service, if those
39 federal officials wish to participate, as well as the director of the

1 department and the Director of Fish and Game, shall be nonvoting
2 ex officio members of the board of directors.

3 79861. The chairperson shall serve full time. Other members
4 shall serve one-third time. The board of directors may select a vice
5 chairperson and other officers determined to be necessary.

6 79862. (a) Each member of the board shall receive the salary
7 provided for in Section 11564 of the Government Code.

8 (b) The members of the board of directors shall be reimbursed
9 for expenses necessarily incurred in the performance of official
10 duties.

11 (c) The board of directors shall appoint an executive director
12 who shall serve full time.

13 (d) The council shall hire employees necessary to carry out the
14 functions of the agency.

15 (e) The number of employees and qualifications of those
16 employees shall be determined by the council, subject to the
17 availability of funds.

18 (f) The salary of each employee of the council shall be
19 determined by the State Personnel Board, and shall reflect the
20 duties and responsibilities of the position.

21 (g) All persons employed by the council are state employees,
22 subject to the duties, responsibilities, limitations, and benefits of
23 the state.

24 79863. Board members shall be selected with diverse expertise
25 and perspectives, and include policy and resource experts, strategic
26 problem solvers, and individuals having success in resolving
27 multiinterest conflicts.

28 79864. The headquarters of the agency shall be located in
29 Sacramento.

30

31 CHAPTER 5. MISSION, DUTIES, AND RESPONSIBILITIES OF THE
32 DELTA ECOSYSTEM AND WATER COUNCIL

33

34 79870. The council shall do all of the following:

35 (a) Prepare and adopt a plan referred to as the California Delta
36 Ecosystem and Water Plan that incorporates the plans of other
37 agencies, as appropriate, to carry out the requirements of this
38 division.

- 1 (b) The council shall have exclusive authority to determine the
2 consistency of any project proposed or approved by a state agency
3 or local government with the plan adopted pursuant to this division.
- 4 (c) Assume responsibility for any conservation or habitat
5 management plan developed for the Delta by the state or federal
6 government.
- 7 (d) Ensure that federal and state actions are consistent with the
8 plan.
- 9 (e) Participate as a trustee agency pursuant to Division 13
10 (commencing with Section 21000) of the Public Resources Code.
- 11 (f) Determine the consistency of major water, road, railroad,
12 utility, and levee infrastructure projects in the Delta with the plan
13 and communicate that determination to the responsible agencies.
- 14 (g) Assess policies applied outside the Delta that are critical to
15 meeting goals of this division and convey the results of that
16 assessment to the responsible agency.
- 17 (h) Work with the Delta Science and Engineering Board to adopt
18 sound principles of adaptive management.
- 19 (i) Receive and allocate funds to advance policies and programs
20 related to the Delta.
- 21 (j) Address environmental justice concerns with regard to the
22 implementation of the plan and regarding future Delta
23 decisionmaking.
- 24 (k) Empanel a public advisory group of stakeholders to advise
25 and make formal recommendations to the council, and to issue a
26 public biennial report on the activities of the council.
- 27 (l) Adopt procedures to facilitate use of alternative approaches
28 to dispute resolution, such as joint factfinding and arbitration to
29 reduce reliance on litigation and the courts.
- 30 (m) Exercise the power to sue to ensure compliance with the
31 plan.
- 32 (n) Establish policies and procedures that ensure that day-to-day
33 operations of water export systems are consistent with the plan.
- 34 79871. (a) The council shall prepare on or before August 1,
35 2010, a schedule for preparing and adopting the plan.
- 36 (b) The council shall prepare a list of all applicable legal
37 requirements, including requirements relating to federal and state
38 endangered species laws, that pertain to the Delta for incorporation
39 into the plan.

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

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

8 (e) Coordinate with stakeholders as well as local, state, and
9 federal agencies.

10 (f) Seek the advice of the council’s public advisory group to
11 enhance stakeholder participation and actively address
12 environmental justice concerns.

13 (g) Establish a goal for the adoption of the plan by December
14 1, 2010.

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

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

20 (j) Review, and if necessary amend, the plan at least every five
21 years.

22
23 CHAPTER 6. DELTA ECOSYSTEM AND WATER PLAN
24

25 79880. (a) The plan shall be prepared in order to achieve the
26 coequal goals of Delta Vision. The plan shall build upon other
27 plans, modifying and extending those plans as needed to meet the
28 requirements of this division. Those other plans include, but are
29 not limited to, the ecosystem restoration program being developed
30 by the Department of Fish and Game, the land use and resource
31 management plan developed by the Delta Protection Commission,
32 any local habitat conservation plan within the Delta, the Suisun
33 Marsh plan under development, the provisions of the California
34 Water Plan that address reliable water supply being developed by
35 the department, and the conservation program resulting from the
36 Bay Delta Conservation Plan.

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

40 79881. The plan shall meet all of the following requirements:

- 1 (a) Include any species protection requirements that impact
2 Delta resources.
- 3 (b) Include requirements for water flow and water quality in
4 the Delta that achieve the coequal goals.
- 5 (c) Identify state land use interests in the Delta, especially those
6 that impact the ecosystem, water supply reliability, and flood
7 concerns.
- 8 (d) Establish principles and procedures for adaptive
9 management.
- 10 (e) Establish requirements for the modeling, data collection,
11 management, monitoring, analysis, and interpretation to support
12 policy decisionmaking.
- 13 (f) Adopt a model designed to maximize flexibility and
14 resiliency in managing the Delta.
- 15 (g) Establish a detailed financing plan that identifies costs,
16 benefits, and revenue sources.
- 17 (h) Serve as a foundational document for a programmatic
18 environmental impact statement or environmental impact report
19 for projects in the Delta that require permits in accordance with
20 the National Environmental Policy Act (42 U.S.C. Sec. 4321 et
21 seq.) and the California Environmental Quality Act.
- 22 (i) Optimize the use of the CALFED Programmatic Record of
23 Decision dated August 28, 2000, and the Coastal Zone
24 Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.) to
25 maximize participation of federal agencies in implementation of
26 the plan.
- 27 79882. (a) The Legislature finds and declares that the
28 preparation of the plan should reflect all of the following principles
29 or goals:
- 30 (1) Recognize and enhance the unique cultural, recreational,
31 and agricultural values of the Delta as an evolving place.
- 32 (2) Restore the Delta ecosystem as the heart of a healthy estuary.
- 33 (3) The construction of facilities to improve the existing water
34 conveyance system, to expand statewide storage facilities, and to
35 operate both the water conveyance system and statewide storage
36 facilities to achieve the coequal goals.
- 37 (4) The reduction of risks to people, property, and state interests
38 in the Delta by means of effective emergency preparedness,
39 appropriate land uses, and strategic levee investments.

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

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

7 79883. The council shall review and revise the plan every five
8 years. The review and revisions shall be based upon the adaptive
9 management program developed by the council and the Delta
10 Science and Engineering Board.

11
12 CHAPTER 7. DELTA ECOSYSTEM AND WATER FUND
13

14 79885. (a) The council may generate revenues and allocate
15 those revenues to pay for the work of the council, the conservancy,
16 the Delta Protection Commission, and related activities of the
17 Department of Fish and Game, the department, and the state board
18 in accordance with this division.

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

22 (c) In establishing fees under this chapter, the council shall be
23 subject to the following requirements:

24 (1) The amount of the fee shall not exceed the reasonable cost
25 of the program the fee supports.

26 (2) The fee shall not be imposed for adverse impacts that the
27 feepayer did not create or for benefits that the feepayer does not
28 obtain.

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

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

37 (e) The moneys in the fund, upon appropriation by the
38 Legislature to the council, shall be expended for the exclusive
39 purpose of implementing this division.

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

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

11
12 CHAPTER 8. THE CALIFORNIA DELTA CONSERVANCY

13
14 79890. The California Delta Conservancy is hereby established
15 to implement the ecosystem restoration elements of the plan.

16 79891. (a) The conservancy shall consist of 11 voting
17 members, including both local and state officials serving staggered
18 terms, with voluntary federal participation in nonvoting roles.

19 (b) The Governor shall appoint the following members:

20 (1) Five members, each of whom shall represent one of the Delta
21 counties who shall be selected from nominees advanced by the
22 Delta Protection Commission.

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

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

26 (d) Two additional public members, one appointed by the Senate
27 Committee on Rules and one by the Speaker of the Assembly,
28 shall serve as nonvoting ex officio members.

29 (e) The Governor shall appoint the chairperson of the
30 conservancy.

31 79892. The conservancy shall do all of the following:

32 (a) Coordinate state ecosystem-related and urban waterfront
33 projects in the Delta.

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

35 (c) Enter into contracts to buy and sell land and other property,
36 and acquire property through the State Public Works Board. The
37 conservancy shall be exempt from approval processes of the
38 Department of General Services.

39 (d) Assume responsibility for publicly or privately owned lands
40 pursuant to voluntary agreements.

1 (e) Receive funding from the state, the council, or any other
2 source, and allocate those funds for purposes consistent with
3 policies and plans adopted by the council.

4 (f) Support appropriate recreation and ecosystem activities in
5 the Delta, including bolstering the local economy and National
6 Heritage Area designations consistent with the plan.

7 (g) Establish incentives for mutually beneficial mixtures of
8 traditional agriculture, habitat, and recreation, including
9 agri-tourism, wildlife-friendly agriculture practices, birdwatching,
10 and hunting.

11
12 CHAPTER 9. THE DELTA PROTECTION COMMISSION
13

14 ~~79895. (a) To ensure state interests in the region are fully~~
15 ~~protected over decades, all general plans of Delta counties and~~
16 ~~cities within Delta counties shall be consistent with the plan.~~

17 ~~(b) The Delta Protection Commission shall revise its resource~~
18 ~~management plan to be consistent with the plan.~~

19 ~~(c) The Delta Protection Commission shall review and certify~~
20 ~~all general plans of Delta counties and cities within Delta counties~~
21 ~~for consistency with its resource management plan and the plan.~~

22 ~~(d) The Delta Protection Commission shall determine whether~~
23 ~~any project approved by local governments within the primary~~
24 ~~zone is consistent with the resource management plan and the plan.~~

25 ~~(e) It is the intent of the Legislature that the Delta Protection~~
26 ~~Commission shall exercise appeal authority over selected portions~~
27 ~~of the secondary zone once local plans are created for those areas.~~
28 ~~Until those local plans are created, it is the intent of the Legislature~~
29 ~~that the commission shall possess direct consistency determination~~
30 ~~authority over development proposals in those areas.~~

31 ~~(f) General plans of Delta counties and cities within those~~
32 ~~counties shall be revised and submitted for consistency review to~~
33 ~~the Delta Protection Commission upon completion. The council~~
34 ~~may review local plans, or exercise consistency determination~~
35 ~~authority for individual projects in the primary or secondary zones,~~
36 ~~at its discretion.~~

37 *79895. As used in this chapter:*

38 *(a) "Commission" means the Delta Protection Commission.*

39 *(b) "Consistent with the plan" means that an action, program,*
40 *or project is consistent with the commission's revised resource*

1 *management plan or the plan if, considering all its aspects, the*
2 *action, program, or project will further the objectives and policies*
3 *of the revised management plan or the plan and not obstruct the*
4 *attainment of those objectives and policies.*

5 (c) *“Development” means, on land, in or under water, the*
6 *placement of any solid material or structure; discharge or disposal*
7 *of any dredged material or of any gaseous, liquid, solid, or thermal*
8 *waste; grading, removing, dredging, mining, or extraction of any*
9 *materials; change in the density or intensity of use of land,*
10 *including, but not limited to, subdivision pursuant to the*
11 *Subdivision Map Act (Division 2 (commencing with Section 66410)*
12 *of Title 7 of the Government Code), and any other division of land*
13 *except where the land division is brought about in connection with*
14 *the purchase of such land by a public agency for public*
15 *recreational use; change in the intensity of water, or of access to*
16 *water; construction, reconstruction, demolition, or alteration of*
17 *the size of any structure, including any facility of any private,*
18 *public, or municipal utility; and the removal or harvesting of major*
19 *vegetation other than for agricultural purposes, kelp harvesting,*
20 *and timber operations that are in accordance with a timber*
21 *harvesting plan submitted pursuant to the provisions of the*
22 *Z’berg-Nejedly Forest Practice Act of 1973 (Chapter 8*
23 *(commencing with Section 4511) of Part 2 of Division 4 of the*
24 *Public Resources Code). As used in this section, “structure”*
25 *includes, but is not limited to, any building, road, pipe, flume,*
26 *conduit, siphon, aqueduct, telephone line, and electrical power*
27 *transmission line and distribution line. “Development” does not*
28 *mean a “change of organization” as defined in Section 56021 of*
29 *the Government Code or a “reorganization” as defined in Section*
30 *56073 of the Government Code.*

31 (d) *“Development project” means any project undertaken for*
32 *the purpose of development. “Development project” includes a*
33 *project involving the issuance of a permit for construction or*
34 *reconstruction, but not a permit to operate. “Development project”*
35 *does not include any ministerial projects proposed to be carried*
36 *out or approved by public agencies.*

37 (e) *“Project” means any activity involving the issuance to a*
38 *person of a lease, permit, license, certificate, or other entitlement*
39 *for use by one or more public agencies.*

1 79896. (a) *To ensure state interests in the region are fully*
2 *protected over decades, all general plans of Delta counties and*
3 *cities within Delta counties shall be consistent with the plan.*

4 (b) *The commission shall revise its resource management plan*
5 *to be consistent with the plan.*

6 79897. (a) *Within 180 days from the date on which the*
7 *commission revises its resource management plan to be consistent*
8 *with the plan as required by Section 79896, each Delta county and*
9 *each city within a Delta county shall submit to the commission*
10 *proposed amendments to make its general plan consistent with the*
11 *commission's revised resource management plan.*

12 (b) *The commission shall act on the proposed amendments*
13 *within 60 days from the date of their submittal. The commission*
14 *shall approve the proposed general plan amendments by a majority*
15 *vote of the commission's membership, only if it finds, based on*
16 *substantial evidence in the record, that the proposed general plan*
17 *amendments are consistent with the commission's revised resource*
18 *management plan.*

19 (c) *A Delta county or a city within a Delta county shall adopt*
20 *its proposed general plan amendments within 120 days after the*
21 *date of approval by the commission.*

22 79898. (a) *The commission shall review and determine whether*
23 *any project proposed to be carried out or approved by a local*
24 *government within the primary zone is consistent with both the*
25 *commission's revised resource management plan and the plan.*

26 (b) *Until a Delta county or a city within a Delta county in which*
27 *a project is located has adopted general plan amendments pursuant*
28 *to Section 79897, the commission shall review and determine*
29 *whether any project proposed to be carried out or approved by a*
30 *local government within the secondary zone is consistent with both*
31 *the commission's revised resource management plan and the plan.*

32 (c) *The commission shall adopt regulations that prescribe the*
33 *form and content for permits. The commission may adopt a*
34 *schedule of filing fees and service charges to recover its costs,*
35 *provided that these fees shall not exceed the estimated reasonable*
36 *cost of providing the service for which the fee is charged.*

37 (d) *The commission shall give notice of any public hearing on*
38 *an application pursuant to Section 65091 of the Government Code.*

39 (e) *The commission shall act on an application for a permit at*
40 *a public hearing, either denying or granting the permit, within 90*

1 days after it files the application. The permit shall be automatically
2 granted if the commission fails to take specific action either
3 denying or granting the permit within the time period specified in
4 this section. The commission shall grant the permit if the
5 commission finds, based on substantial evidence in the record,
6 that the project is consistent with both the commission's revised
7 resource management plan and the plan. To effectuate the purposes
8 of the commission's revised resource management plan and the
9 plan, the commission may grant a permit subject to reasonable
10 terms and conditions, including the uses of land and structures,
11 intensity of uses, and construction methods. A majority vote of the
12 members of the commission is required to grant a permit.

13 (f) The commission may adopt regulations that allow the
14 executive director to issue permits without otherwise complying
15 with this section in cases of emergency or for minor repairs or
16 minor improvements.

17 (g) If the commission denies a permit, the applicant may submit
18 another application for the permit directly to the commission after
19 90 days from the date of the denial.

20 (h) Any project authorized pursuant to this section shall be
21 commenced, performed, and completed in compliance with the
22 provisions of all permits granted or issued by the commission and
23 by any Delta county or city in a Delta county.

24 (i) Any action or proceeding to contest or question the
25 commission's denial of a permit application, or conditions attached
26 to approval of a permit application, shall be commenced in the
27 appropriate court within 90 days following the date of that action
28 by the commission.

29 (j) Any person who undertakes a development project within
30 the commission's jurisdiction without securing a permit from the
31 commission as required by this section is guilty of a misdemeanor.

32 79899. At its discretion, the council may do both of the
33 following:

34 (a) Review the general plans of Delta counties and cities in
35 Delta counties.

36 (b) Review development projects in the primary and secondary
37 zones to determine whether they are consistent with the plan.

38

39 CHAPTER 10. THE DELTA SCIENCE AND ENGINEERING BOARD
40 AND THE DELTA SCIENCE AND ENGINEERING PROGRAM

1 79900. The Legislature finds and declares all of the following:

2 (a) California should maintain a strong and consistent investment
3 in science and engineering important to the Delta. There needs to
4 be a more direct link between scientific investigation and
5 real-world management and policy.

6 (b) To achieve this, the council requires both a permanent
7 science and engineering program staff and an independent science
8 and engineering board that reviews actions undertaken by the
9 council.

10 (c) The program and the board should receive stable, adequate
11 funding.

12 (d) The science and engineering program should be a
13 replacement for, and a successor to, the successful CALFED
14 Independent Science Program, and a newly constituted delta
15 science and engineering board should replace the CALFED
16 Independent Science Board.

17 79901. The Delta Science and Engineering Board is hereby
18 established, consisting of between 12 and 20 individuals with
19 natural science, social science, engineering, and policy expertise
20 appointed by the council to a maximum of two five-year terms.
21 Lead scientists appointed by the council shall have a rotating
22 appointment of three years. To ensure independence, the current
23 practice in which lead scientists are formally engaged by an agency
24 other than the state, such as the United States Geological Survey,
25 should continue. The Delta Science and Engineering Board shall
26 respond to requests from the council or independently offer advice
27 on significant issues of its choosing.

28 79902. The council shall appoint persons to serve on the Delta
29 Science and Engineering Board. The Delta Science and Engineering
30 Board shall carry out a Delta science and engineering program
31 referred to as the Delta Science and Engineering Program under
32 the direction of the council. That program shall undertake all of
33 the following activities:

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

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

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

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

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

7 (f) Prepare discussion papers and interactive lectures.

8 ~~SEC. 4. If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.~~

13 *SEC. 4. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution for certain
15 costs that may be incurred by a local agency or school district
16 because, in that regard, this act creates a new crime or infraction,
17 eliminates a crime or infraction, or changes the penalty for a crime
18 or infraction, within the meaning of Section 17556 of the
19 Government Code, or changes the definition of a crime within the
20 meaning of Section 6 of Article XIII B of the California
21 Constitution.*

22 *However, if the Commission on State Mandates determines that
23 this act contains other costs mandated by the state, reimbursement
24 to local agencies and school districts for those costs shall be made
25 pursuant to Part 7 (commencing with Section 17500) of Division
26 4 of Title 2 of the Government Code.*

O