

Introduced by Senator PavleyFebruary 23, 2009

An act to add Division 28 (commencing with Section 80500) to, and to repeal and add Article 2 (commencing with Section 150) of Chapter 2 of Division 1 of, the Water Code, relating to the Sacramento-San Joaquin Delta.

LEGISLATIVE COUNSEL'S DIGEST

SB 229, as introduced, Pavley. California Water Commission: Bay-Delta.

(1) Existing law establishes the 9-member California Water Commission in the Department of Water Resources and requires the commission to conduct an annual review of the progress and operation of the State Water Project and to carry out various other related functions.

This bill would substantially revise the membership and functions of the commission. The bill would establish the commission in the Natural Resources Agency and require that it be considered an independent commission. The commission would consist of 5 members appointed by the Governor and subject to the confirmation of the Senate. The commission would have primary authority to implement and oversee the implementation of the Bay-Delta Interim Governance Act of 2009, as described in (2). The bill would authorize the commission to serve as lead agency to implement specified projects recommended by the final environmental impact report of the Bay-Delta Conservation Plan.

(2) Existing law requires various state agencies to carry out programs, projects, and activities on behalf of the Sacramento-San Joaquin Delta.

The California Bay-Delta Authority Act establishes in the Natural Resources Agency the California Bay-Delta Authority. The act requires

the authority and the implementing agencies to carry out programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those projects, programs, commitments, and other actions that address the goals and objectives of the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000, or as it may be amended.

This bill would enact the Bay-Delta Interim Governance Act of 2009 to provide for interim management and governance measures for the Bay-Delta, as defined, and to enhance the reliability of water supplies that originate in the Bay-Delta. The act would require the agency to adopt a Bay-Delta Conservation Plan for the Bay-Delta. The development and implementation of the plan would be funded through a fee established by the commission and paid by all entities that are beneficiaries, as defined, of the plan and those entities that divert water from a Delta water body. The act would require the State Board of Equalization to collect the fee and deposit the moneys collected in the Delta Governance Account, which the bill would establish. Moneys in the account would be available, upon appropriation by the Legislature, only for expenditure on projects or programs contained in the plan.

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

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

1 SECTION 1. Article 2 (commencing with Section 150) of
2 Chapter 2 of Division 1 of the Water Code is repealed.

3 SEC. 2. Article 2 (commencing with Section 150) is added to
4 Chapter 2 of Division 1 of the Water Code, to read:

5
6 Article 2. California Water Commission

7
8 150. There is in the Natural Resources Agency the California
9 Water Commission, is an independent commission. In addition to
10 its duties and responsibilities contained herein the commission
11 shall focus on interim measures in the Bay-Delta as described in
12 this article.

13 151. The California Water Commission consists of five
14 members appointed by the Governor and subject to the
15 confirmation of the Senate, as provided in this article.

1 152. The Governor shall select and approve members for
2 appointment on the basis of their general educational and business
3 qualifications, and their knowledge of, interest in, and experience
4 with problems relating to the control, storage, and beneficial use
5 of water. The membership shall represent all parts of the state so
6 far as it is practicable.

7 153. The Governor shall appoint the initial five members of
8 the California Water Commission before January 15, 2010. The
9 members shall serve staggered terms. The terms of the members
10 of the California Water Commission shall expire as follows: one
11 member on January 15, 2011, two members on January 15, 2012,
12 and two members on January 15, 2013. The members of the
13 commission shall allocate the initial terms among themselves by
14 lot or other method.

15 154. Appointments shall be for terms of four years. Vacancies
16 shall be immediately filled by the Governor for the unexpired
17 portion of the terms in which they occur.

18 155. The appointments made by the Governor to membership
19 on the California Water Commission are subject to confirmation
20 by the Senate at the next regular or special session of the
21 Legislature and the refusal or failure of the Senate to confirm an
22 appointment shall create a vacancy in the office to which the
23 appointment was made.

24 156. The members of the California Water Commission may
25 be removed from office by the Legislature, by concurrent resolution
26 adopted by a majority vote of all members elected to each house,
27 for dereliction of duty, corruption, or incompetency.

28 157. Each member of the California Water Commission shall
29 receive one hundred dollars (\$100) for each day during which the
30 member is engaged in the performance of official duties, but shall
31 not be compensated for more than 40 days in any one fiscal year,
32 except that the chairperson of the commission may be compensated
33 for up to 60 days for performance of those duties. In addition to
34 that compensation, each member shall be reimbursed for necessary
35 traveling and other expenses incurred in the performance of official
36 duties.

37 158. The California Water Commission shall maintain its
38 headquarters in Sacramento and shall hold meetings at such times
39 and at such places as shall be determined by it. All meetings of
40 the commission shall be open and public.

1 159. Special meetings may be called at any time by the chair
2 of the commission or by the executive officer at the request of any
3 four members, upon notice specifying the matters to be acted upon
4 at that meeting, but no other matters shall be acted upon at special
5 meetings that were not so noticed, unless all members are present
6 and consent thereto.

7 160. The members of the California Water Commission shall
8 select one of the members to serve as chair, who shall hold office
9 as chair at the pleasure of the commission.

10 161. The California Water Commission shall confer with,
11 advise, and make recommendations to the director with respect to
12 any matters and subjects under the jurisdiction of the director. All
13 rules and regulations of the department, other than those relating
14 exclusively to the internal administration and management of the
15 department, shall be first presented by the director to the
16 commission and shall become effective only upon approval by the
17 commission.

18 162. The California Water Commission shall have the power
19 to name all facilities of the State Water Resources Development
20 System owned by the state. The commission may receive testimony
21 from the public on matters involving its responsibilities under this
22 section, and, after public hearing for the purpose of considering
23 all proposed names for those facilities, may, by resolution, express
24 its decision regarding the naming of specific facilities of the State
25 Water Resources Development System.

26 163. (a) The commission shall have primary authority to
27 implement and oversee the implementation of the Bay-Delta
28 Interim Governance Act of 2009 (Division 28 (commencing with
29 Section 80500), including, but not limited to, the responsibility to
30 ensure that the coequal goals for the governance of the Delta
31 identified in that division are successfully coordinated and
32 implemented, the implementation of the Bay-Delta Conservation
33 Plan adopted pursuant to that act, and the responsibility to
34 recommend priority activities and projects to the Natural Resources
35 Agency, the state board, and other entities for environmental review
36 and implementation that are included within the Bay-Delta
37 Conservation Plan.

38 (b) The commission may serve as lead agency to implement
39 specified projects recommended by the final environmental impact
40 report of the Bay-Delta Conservation Plan. The commission may

1 enter into agreements with appropriate state agencies to provide
2 technical assistance that may be necessary to implement specific
3 projects.

4 (c) Establish a Delta fee in accordance with Section 80535.

5 (d) The commission shall recommend at least one individual to
6 serve as a watermaster who shall be charged with the responsibility
7 of enforcing all statutory provisions that are relevant to the
8 successful implementation of the Bay-Delta Conservation Plan.
9 The costs of the watermaster shall be paid from the Delta
10 Governance Account established pursuant to Section 80535.

11 (e) Watermaster decisions may be appealed by an affected party
12 to the chair of the state board. The chair may stay decisions if he
13 or she determines that the decision of the watermaster was not
14 supported by substantial evidence in the record. An order of the
15 chair of the state board pursuant to this subdivision that stays an
16 order of the watermaster shall be set for hearing before the full
17 state board at the earliest possible meeting.

18 164. The commission may employ an executive officer, exempt
19 from civil service, under subdivision (e) of Section 4 of Article
20 XXIV of the Constitution, and other staff it determines to be
21 necessary for the proper discharge of its duties and may purchase
22 or rent necessary supplies, instruments, tools, equipment, and
23 conveniences.

24 165. The department shall furnish to the California Water
25 Commission, at its request, assistance, including technical, legal,
26 and clerical services, as is required to the extent funds are made
27 available therefor.

28 166. (a) The commission may hold any hearings and conduct
29 any investigations in any part of the state necessary to carry out
30 the powers vested in it, and for those purposes has the powers
31 conferred upon heads of departments of the state by Article 2
32 (commencing with Section 11180) of Chapter 2 of Part 1 of
33 Division 3 of Title 2 of the Government Code.

34 (b) Any hearing or investigation by the commission may be
35 conducted by any member or nominee upon authorization of the
36 commission, and he or she shall have the powers granted to the
37 commission by this section, but any final action of the commission
38 shall be taken by a majority of the members of the commission at
39 a meeting duly called and held.

1 167. The California Water Commission shall conduct an annual
2 review of the progress of construction and operation of the State
3 Water Resources Development System, and shall make a report
4 on its findings to the department and to the Legislature, together
5 with whatever recommendations it deems appropriate.

6 168. The California Water Commission shall hold public
7 hearings on all additional facilities proposed to be added to the
8 State Water Resources Development System by the department
9 pursuant to the authority granted by Sections 12931 and 12938.

10 SEC. 3. Division 28 (commencing with Section 80500) is added
11 to the Water Code, to read:

12
13 DIVISION 28. BAY-DELTA INTERIM GOVERNANCE

14
15 CHAPTER 1. GENERAL PROVISIONS

16
17 80500. This division shall be known and may be cited as the
18 Bay-Delta Interim Governance Act of 2009.

19 80501. (a) It is the intent of the Legislature to provide for
20 interim management and governance measures that will contribute
21 to the health of the Bay-Delta and to enhance water supply
22 reliability to those who depend on adequate water supplies that
23 originate in the Bay-Delta.

24 (b) It is further the intent of the Legislature to accomplish the
25 identified tasks through the use of existing government agencies
26 and not to create additional entities.

27 (c) It is further the intent of the Legislature that federal, state,
28 and local governments should cooperate in devising the necessary
29 projects, programs, water supply reliability improvements, and
30 ecosystem recovery strategies in the Delta.

31
32 CHAPTER 2. DEFINITIONS

33
34 80510. Unless the context otherwise requires, the definitions
35 set forth in this chapter govern the construction of this division.

36 80511. "Account" means the Delta Governance Account
37 established in Section 80535.

38 80512. "Agency" means the Natural Resources Agency.

39 80513. "Commission" means the California Water Commission.

1 80514. “Delta” means the Sacramento-San Joaquin Delta
2 estuary, as defined in Section 12220 and Suisun Bay.

3 80515. “Plan” means the Bay-Delta Conservation Plan adopted
4 pursuant to Chapter 3 (commencing with Section 80530).

5
6 CHAPTER 3. BAY-DELTA OPERATION
7

8 80530. (a) It is the policy of the state that, to the maximum
9 extent practicable, projects and programs of state agencies that
10 affect the Bay-Delta shall achieve the two coequal goals of
11 ecosystem recovery and improvements to the reliability of public
12 water supplies.

13 (b) The agency, in consultation with the state board, shall
14 undertake all necessary actions to ensure that all funds and
15 programs of the State of California and its cooperating partners in
16 the federal government and local governments in the Bay-Delta
17 are consistent with the goals established in subdivision (a).

18 80531. (a) The agency shall adopt a Bay-Delta Conservation
19 Plan for the Bay-Delta. The plan shall incorporate adaptive
20 management techniques to the maximum extent practicable in
21 order to focus the best available scientific information on the two
22 coequal goals established in subdivision (a) of Section 80530.

23 (b) The agency shall act as the lead agency in the development
24 of the plan. The plan shall be consistent with the Natural
25 Community Conservation Planning Act (Chapter 10 (commencing
26 with Section 2800) of Division 10 of the Fish and Game Code.)
27 The Secretary for Natural Resources shall extend an invitation to
28 appropriate federal agencies and local governments inviting their
29 participation and entering into agreements consistent with this
30 section at the earliest possible time.

31 80532. The Secretary for Natural Resources shall extend an
32 invitation to cooperating federal agencies and local governments
33 to participate in the interim governance of the Bay-Delta pursuant
34 to this division.

35 80533. The plan and its component projects shall fully comply
36 with the California Environmental Quality Act (Division 13
37 (commencing with Section 21000) of the Public Resources Code).
38 It is the intent of the Legislature that the agency shall, to the extent
39 feasible, coordinate with local governments that are developing
40 natural community conservation plans adjacent to the Delta.

1 80534. The Legislature finds and declares that, in addition to
2 the development and implementation of the plan, other interim
3 measures not included in the plan should be addressed in the short
4 term, including, but not limited to, issues pertaining to
5 transportation, utilities, recreation, water supply, flood control,
6 and others. The parties identified in Section 12805.4 of the
7 Government Code shall develop an interim plan that includes
8 recommendations for projects and programs to address these issues
9 that can be implemented as interim measures.

10 80535. (a) The development and implementation of the plan
11 shall be funded through a fee paid by all entities that are
12 beneficiaries of the plan and those entities that divert water from
13 a Delta water body. For purposes of this section, plan
14 “beneficiaries” are those entities that obtain or are delegated
15 authority, pursuant to the plan or its implementing agreements, to
16 take endangered, threatened, or candidate species protected under
17 state or federal law.

18 (b) The commission shall establish the fee, in consultation with
19 the agency and the state board, sufficient to fund the development
20 and implementation of the plan. The fee may be graduated to reflect
21 factors recognized by the commission that may include, but are
22 not limited to, the volume of water diverted, the nature and type
23 of the diversion, and other factors as determined by the
24 commission. The State Board of Equalization shall collect the fee
25 and deposit the moneys collected in the Delta Governance Account,
26 which is hereby established within the State Treasury. The moneys
27 in the account shall be available, upon appropriation by the
28 Legislature, only for expenditure on projects or programs contained
29 in the plan.

30 80536. Plan projects may be funded, if authorized, by moneys
31 made available by bond acts approved before January 1, 2010,
32 upon appropriation by the Legislature for that purpose. It is the
33 intent of the Legislature that plan projects may also be funded from
34 other general obligation bonds approved by a vote of the people
35 and revenue bonds.