

AMENDED IN SENATE JUNE 27, 2012

AMENDED IN SENATE JUNE 19, 2012

AMENDED IN SENATE JUNE 12, 2012

AMENDED IN SENATE JUNE 22, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1095

**Introduced by Assembly Member Buchanan
(Principal coauthors: Assembly Members Bill Berryhill and
Galgiani)**

February 18, 2011

An act to amend Section 85057.5 of the Water Code, relating to the Sacramento-San Joaquin Delta.

LEGISLATIVE COUNSEL'S DIGEST

AB 1095, as amended, Buchanan. Sacramento-San Joaquin Delta Reform Act of 2009: covered actions.

Existing law, the Sacramento-San Joaquin Delta Reform Act of 2009, establishes the Delta Stewardship Council as an independent agency of the state. Existing law requires a state or local public agency that proposes to take a covered action that will occur within the boundaries of the Delta or the Suisun Marsh to prepare, and submit to the council, a specified written certification of consistency with the Delta Plan prior to taking those actions. Existing law defines a "covered action" to mean a plan, program, or project, as specified.

Existing law, the Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992, requires the Delta Protection Commission to review and maintain a comprehensive long-term resource management plan for land uses within the primary zone, as defined, of the Delta. Existing law defines the secondary zone as all the Delta land and water area within the boundaries of the Delta not included within the primary zone, subject to the land use authority of local government, as prescribed.

This bill would exclude from the definition of “covered action” any ~~project or portion of a project that falls, as defined, as of September 30, 2009, that is~~ within an urban or urbanizing area within the Delta’s secondary zone ~~and which is covered by a general plan, sphere of influence, specific or master plan, community plan, or development agreement adopted by the relevant local land use authority zone, within the boundaries of the community’s adopted sphere of influence or urban limit line and substantially conforms with an adopted general plan.~~

Existing law, the California Environmental Quality Act (CEQA) requires a lead agency to prepare and certify the completion of an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant impact on the environment or to adopt a negative declaration if it finds that the project will not have that effect. The National Environmental Policy Act (NEPA) requires federal agencies to prepare environmental assessments or environmental impact reports that contain statements of the environmental effects of proposed federal agency actions.

This bill would exclude from the definition of “covered action” any upgrade to an existing drinking water, stormwater, or wastewater treatment, storage, or conveyance facility within the existing physical footprint or legal property boundaries, as applicable, of the facility, to meet a state or federal water quality compliance order, as specified. This bill would also exclude from the definition of “covered action” any flood control project undertaken within the Delta’s secondary zone that is consistent with the Central Valley Flood Protection Act of 2008 and which would provide protection to an urban or urbanizing area or existing public infrastructure. These upgrades and projects would have to comply with CEQA or NEPA, or both.

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. The Legislature finds and declares all of the~~
2 ~~following:~~

3 ~~(a) The Legislature passed and the Governor signed Senate Bill~~
4 ~~1 of the Seventh Extraordinary Session of 2009 (Chapter 5 of the~~
5 ~~Seventh Extraordinary Session of the Statutes of 2009), which~~
6 ~~establishes the framework to achieve the coequal goals of providing~~
7 ~~a more reliable water supply to California and restoring and~~
8 ~~enhancing the Delta ecosystem.~~

9 ~~(b) This statute created the Delta Stewardship Council (DSC),~~
10 ~~an independent seven-member body that is tasked with developing~~
11 ~~a long-term plan for the Delta that meets the coequal goals of~~
12 ~~providing a more reliable water supply for California while~~
13 ~~preserving, enhancing, and protecting the Delta ecosystem and~~
14 ~~respecting the unique cultural, recreational, natural resource, and~~
15 ~~agricultural values of the Delta as an evolving place.~~

16 ~~(c) The DSC is tasked with drafting and implementing the Delta~~
17 ~~Plan, and requires that actions in the primary and secondary zones~~
18 ~~be consistent with the plan as determined by the council upon an~~
19 ~~appeal.~~

20 ~~(d) Inherent in Senate Bill 1 of the Seventh Extraordinary~~
21 ~~Session of 2009 is the subjective standard of consistency of the~~
22 ~~coequal goals as interpreted by the DSC. Local government~~
23 ~~decisions on private and public development within the primary~~
24 ~~and secondary zones of the Delta are subject to decisions where~~
25 ~~statutory ambiguity related to their sovereign powers is the cause~~
26 ~~of unintended consequences.~~

27 ~~(e) Several projects in the secondary zone are located in areas~~
28 ~~that will not cause any findings of inconsistency with the coequal~~
29 ~~goals, but are currently under a significant cloud due to this~~
30 ~~ambiguity.~~

31 ~~(f) The ambiguity will have the significant impact of either~~
32 ~~stalling or destroying years of actions and local government~~
33 ~~approvals for municipal private development, and local~~
34 ~~governments' authority to comply with state and federal law with~~
35 ~~respect to flood control projects in the secondary zone consistent~~
36 ~~with the Bay Delta Conservation Plan or levee improvements are~~
37 ~~also clouded, jeopardizing public safety.~~

1 ~~(g) It is the intent of this act to provide a very narrow description~~
 2 ~~of enumerated actions in order to relieve the necessity of these~~
 3 ~~actions from being reviewed by the DSC for consistency, including~~
 4 ~~specific exclusions from the statutory definition of “covered~~
 5 ~~actions” as defined in subdivision (b) of Section 85057.5 of the~~
 6 ~~Water Code for specific areas of private development and for a~~
 7 ~~limited and specific number of levee and flood control projects~~
 8 ~~within the secondary zone.~~

9 ~~(h) It is the intent of this act to relieve these enumerated projects~~
 10 ~~from the cloud of ambiguity of the consistency standard that could~~
 11 ~~disrupt financing of private developments in progress.~~

12 ~~SEC. 2.~~

13 ~~SECTION 1.~~ Section 85057.5 of the Water Code is amended
 14 to read:

15 85057.5. (a) “Covered action” means a plan, program, or
 16 project as defined pursuant to Section 21065 of the Public
 17 Resources Code that meets all of the following conditions:

18 (1) Will occur, in whole or in part, within the boundaries of the
 19 Delta or Suisun Marsh.

20 (2) Will be carried out, approved, or funded by the state or a
 21 local public agency.

22 (3) Is covered by one or more provisions of the Delta Plan.

23 (4) Will have a significant impact on achievement of one or
 24 both of the coequal goals or the implementation of
 25 government-sponsored flood control programs to reduce risks to
 26 people, property, and state interests in the Delta.

27 (b) “Covered action” does not include any of the following:

28 (1) A regulatory action of a state agency.

29 (2) Routine maintenance and operation of the State Water
 30 Project or the federal Central Valley Project.

31 (3) Regional transportation plans prepared pursuant to Section
 32 65080 of the Government Code.

33 (4) Any plan, program, project, or activity within the secondary
 34 zone of the Delta that the applicable metropolitan planning
 35 organization under Section 65080 of the Government Code has
 36 determined is consistent with either a sustainable communities
 37 strategy or an alternative planning strategy that the State Air
 38 Resources Board has determined would, if implemented, achieve
 39 the greenhouse gas emission reduction targets established by that
 40 board pursuant to subparagraph (A) of paragraph (2) of subdivision

1 (b) of Section 65080 of the Government Code. For purposes of
2 this paragraph, “consistent with” means consistent with the use
3 designation, density, building intensity, transportation plan, and
4 applicable policies specified for the area in the sustainable
5 communities strategy or the alternative planning strategy, as
6 applicable, and any infrastructure necessary to support the plan,
7 program, project, or activity.

8 (5) Routine maintenance and operation of any facility located,
9 in whole or in part, in the Delta, that is owned or operated by a
10 local public agency.

11 (6) Any plan, program, project, or activity that occurs, in whole
12 or in part, in the Delta, if both of the following conditions are met:

13 (A) The plan, program, project, or activity is undertaken by a
14 local public agency that is located, in whole or in part, in the Delta.

15 (B) Either a notice of determination is filed, pursuant to Section
16 21152 of the Public Resources Code, for the plan, program, project,
17 or activity by, or the plan, program, project, or activity is fully
18 permitted by, September 30, 2009.

19 (7) (A) Any project within the secondary zone, as defined
20 pursuant to Section 29731 of Public Resources Code as of January
21 1, 2009, for which a notice of approval or determination pursuant
22 to Section 21152 of the Public Resources Code has been filed
23 before the date on which the Delta Plan becomes effective.

24 (B) Any project for which a notice of approval or determination
25 is filed on or after the date on which the final Bay Delta
26 Conservation Plan becomes effective, and before the date on which
27 the Delta Plan becomes effective, is not a covered action but shall
28 be consistent with the Bay Delta Conservation Plan.

29 (C) Subparagraphs (A) and (B) do not apply to either of the
30 following:

31 (i) Any project that is within a Restoration Opportunity Area
32 as shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy
33 of the Bay Delta Conservation Plan, August 3, 2009, or as shown
34 in a final Bay Delta Conservation Plan.

35 (ii) Any project that is within the alignment of a conveyance
36 facility as shown in Figures 1 to 5, inclusive, of the Final Draft
37 Initial Assessment of Dual Delta Water Conveyance Report, April
38 23, 2008, and in future revisions of this document by the
39 department.

1 (8) (A) Any project, as defined by Section 21065 of the Public
 2 Resources Code, or part of a project, including, but not limited to,
 3 subsequent entitlements and supporting infrastructure
 4 improvements required for implementation of a project, that is
 5 both within an urban area or urbanizing area, as shown in Figure
 6 5-1 in the Final Staff Draft Delta Plan (dated May 14, 2012), and
 7 in the secondary zone, as defined by Section 29731 of the Public
 8 Resources Code, and is contained within the boundaries of, covered
 9 by, and substantially conforms with, a general plan, sphere of
 10 influence, specific or master plan, community plan, or a
 11 development agreement adopted by the applicable local land use
 12 authority within the urban or urbanizing area: *if, as of September*
 13 *30, 2009, all of the following conditions are met:*

14 (i) *The project is within an urban area or urbanizing area, as*
 15 *shown in Figure 5-1 in the Final Staff Draft Delta Plan (dated*
 16 *May 14, 2012).*

17 (ii) *The project is in the secondary zone, as defined by Section*
 18 *29731 of the Public Resources Code.*

19 (iii) *The project is within the boundaries of the community’s*
 20 *adopted sphere of influence or urban limit line and substantially*
 21 *conforms with an adopted general plan.*

22 (B) *Any substantive expansion or amendment of the existing*
 23 *boundaries of an urban or urbanizing area’s sphere of influence*
 24 *or general plan into the Delta shall not be exempt from the*
 25 *definition of “covered action.”*

26 (9) Any upgrades to existing drinking water, stormwater, or
 27 wastewater treatment, storage, or conveyance facility, within the
 28 existing physical footprint or legal property boundaries, as
 29 applicable, of that facility, to meet a state or federal water quality
 30 compliance order, or both, consistent with state standards or federal
 31 standards, or both, and which complies with the California
 32 Environmental Quality Act (Division 13 (commencing with Section
 33 21000) of the Public Resources Code) or the federal National
 34 Environmental Protection Act (42 U.S.C. Sec. 4321 et seq.), or
 35 both.

36 (10) Any flood control project in the secondary zone of the
 37 Delta that is consistent with the applicable provisions of the Central
 38 Valley Flood Protection Act of 2008 (Part 6 of Division 5
 39 (commencing with Section 9600)), which would provide protection
 40 to an urban or urbanizing area, as shown by Figure 5-1 in the Final

1 Staff Draft Delta Plan (dated May 14, 2012), and as defined by
2 Section 65007 of the Government Code, or existing public
3 infrastructure, and which has complied with the California
4 Environmental Quality Act (Division 13 (commencing with Section
5 21000) of the Public Resources Code) or the National
6 Environmental Quality Act (42 U.S.C. Sec. 4321 et seq.), or both.

7 (c) Nothing in the application of this section shall be interpreted
8 to authorize the abrogation of any vested right whether created by
9 statute or by common law.

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