

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 650 (Cabaldon)
Version: April 9, 2025
Hearing Date: April 29, 2025
Fiscal: Yes
Urgency: No
AM

SUBJECT

The Sacramento-San Joaquin Delta Reform Act of 2009

DIGEST

This bill amends the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) to include state and local public agencies as entities authorized to appeal a certification of consistency, and provides that challenges to certain actions of the Delta Stewardship Council (Council) must be brought within 90 days of the Council's final decision, as specified.

EXECUTIVE SUMMARY

This bill seeks to provide clarity and strengthen the Delta Reform Act by: specifying that public entities can bring an appeal challenging a covered action; establishing a time limit for challenging final Council actions and determinations; and protects the Delta Plan from being invalidated by including a severability provision. The bill is author-sponsored and supported by the Delta Stewardship Council. The Committee received no timely opposition. The bill passed the Senate Natural Resources and Water Committee on a vote of 6 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes that providing a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem pursuant to the Delta Protection Act are equal goals of the state. (Pub. Res. Code § 29702; Wat. Code § 85054.)
- 2) Establishes the Sacramento-San Joaquin Delta Reform Act of 2009. (Wat. Code §§ 85000 et seq.)

- 3) Establishes the Council as a state agency tasked with developing and implementing the Delta Plan to guide state and local agency actions in the Delta to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place in a manner consistent with the coequal goals of the Delta Protection Act. (Wat. Code §§ 85200 et seq.)
- 4) Requires state and local agencies proposing covered actions (i.e. specified projects) in the Delta to certify to the Council that the covered action is consistent with the Delta Plan. (Wat. Code § 85225.)
- 5) Authorizes any person that believes a covered action is inconsistent with the Delta Plan to file an appeal with the Council within 30 days to review the covered action's consistency with the Delta Plan. (Wat. Code §§ 85225.10; 85225.15.)
- 6) Requires the Council to hear the appeal within 60 days of the date of filing, and requires the Council to make its decision on the appeal within 60 days of hearing the appeal. (Wat. Code § 85225.20.)
 - a) Requires the Council to make specific written findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the finding that the certification of consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification. Upon remand, the state or local agency may determine whether to proceed with the covered action. If the agency decides to proceed with the action or with the action as modified to respond to the findings of the Council, the agency must, prior to proceeding with the action, file a revised certification of consistency that addresses each of the findings made by the Council and file that revised certification with the Council. (Wat. Code § 85225.25.)

This bill:

- 1) Defines "person" for purposes of filing an appeal with the Council against a proposed covered action as also including any state or local public agency.
- 2) Requires a legal challenge to the Council's adoption or amendment of the Delta Plan or its appeals procedures to be brought pursuant to Section 1085 of the Code of Civil Procedure within 90 days of the Council's final decision.
- 3) Requires a legal challenge to the Council's determination of an appeal regarding proposed covered action procedures to be brought pursuant to Section 1094.5 of the Code of Civil Procedure within 90 days of the Council adopting its written findings.

- 4) Provides that the provisions of the Delta Plan are severable. If any provision of the Delta Plan is held invalid, that invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

COMMENTS

1. Stated need for the bill

The author writes:

With fifteen years of experience implementing the Delta Reform Act, there are clear lessons on how we can improve the framework to provide more certainty for needed projects and facilitate the implementation of the Delta Plan. These updates will support the Delta Stewardship Council in their mission to further the state's co-equal goals of providing a more reliable water supply and protecting the Delta ecosystem, all while recognizing the Delta as an evolving place.

SB 650 will provide critical updates to the Delta Reform Act, clarifying the ability of public entities to engage in appeal processes, establishing a time limit for challenging Council actions to provide certainty for beneficial public projects to move forward, and ensuring an enforceable state plan for the Delta continues to protect the Delta even if part of the Plan is challenged in court. In order to preserve time for community input and organizing, the statute of limitations is set for 90 days, 30 days longer than processes in comparable state agency processes.

These changes will strengthen overall protections for the Delta ecosystem, affirm the ability for all parties to fairly participate, and create more certainty for projects that advance the goals of the Delta Plan.

2. Background

a. The Sacramento-San Joaquin Delta

The Senate Natural Resources and Water Committee analysis of this bill provides useful background on the Sacramento-San Joaquin Delta (Delta):

The Delta is formed by the confluence of the Sacramento and San Joaquin rivers and covers about 1,150 square miles in Sacramento, San Joaquin, Contra Costa, Solano, and Yolo counties. The Delta comprises about 70 islands that have been created from what was historically tidal marshland through the construction of over 1,100 miles of levees. About three-fourths of the water flowing into the Delta comes from the Sacramento River. In addition, the Suisun Marsh, the San Francisco Bay, and the Pacific Ocean affect the Delta through the tides and the flow of saltwater.

Although the Delta is geographically located in one part of the state, it affects the rest of the state in four important ways. The Delta is (1) a biologically diverse ecosystem, (2) essential to the state's water system, (3) a place with economic and cultural value to the state, and (4) an important infrastructure corridor. The Delta is the largest estuary on the west coast and contains a variety of habitat types for over 700 species of fish and wildlife. In addition, many of the state's native fish species migrate through the Delta. As a result, the Delta is important for maintaining biodiversity in California and the United States and is essential to the state's water system.¹

b. Sacramento-San Joaquin Delta Reform Act of 2009

The Sacramento-San Joaquin Delta Reform Act of 2009 (Simitian SBX7 1, Ch. 5, Stats. 2009) (Delta Reform Act) was one of several special-session bills enacted that year related to water supply reliability, ecosystem health, and the Delta. The Delta Reform Act created the Council and required the Council to develop and adopt an enforceable long-term sustainable management plan for the Delta to achieve the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. Any state or local agency proposing to undertake a qualifying action, or "covered action" is required to submit a written certification of consistency to the Council with detailed findings as to whether the covered action is consistent with the Delta Plan. The Delta Reform Act allows a person to file an appeal with the Council claiming a proposed covered action is inconsistent with the Delta Plan. The term "person" is defined for purposes of the Water Code generally as any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company, but is not defined for purposes of the Delta Reform Act specifically. (Wat. Code § 19.)

c. Bill seeks to clarify and update the Delta Reform Act

This bill defines "person" for purposes of who is eligible to file an appeal with the Council challenging a covered action to include any state or local public agency. The author claims this is consistent with current practice of the Council and will avoid any confusion to whether a state agency or local public agency can file an appeal with the Council. The author states that the existing lack of a timeline to challenge actions of the Council creates uncertainty for projects because they can face a legal challenge at any time. The bill addresses this issue by providing clear timelines for challenging final actions or determinations of the Council by requiring a legal challenge to be filed within 90 days of the final decision or determination, and specifies what type of writ procedure is to be followed.

¹ Sen. Natural Resources and Wat. Comm. analysis of SB 650 (2025-26 reg. sess.) at p. 1.

The bill also includes a severability clause that states if any provision of the Delta Plan is held invalid, that invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application. This provision is brought in response to a situation that happened in 2016 where a superior court decision invalidated the entire Delta Plan, though the Council appealed the decision and ultimately had the plan reinstated. (*Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014.) Without this severability clause, future litigation could meet a similar fate.

3. Statements in support

The Delta Stewardship Council writes in support, stating:

Presently, Council actions are potentially subject to the default three-year statute of limitations under the Code of Civil Procedure. A three-year statute of limitations is burdensome to the Council and beneficial public projects. Covered actions heard on appeal by the Council could remain in a prolonged state of litigation uncertainty well after the conclusion of the Council's process. The possibility of a Council decision being reversed up to three years after its action imposes: 1) an unreasonable burden on projects that already require approval or permits from multiple local, state, and federal agencies, and 2) costly effects on project construction, particularly since projects often begin implementation soon after completing the Council's consistency certification process. There is even the potential that a project could be completed yet still be subject to litigation under the Delta Reform Act. The statute of limitations proposed in SB 650 provides certainty to projects who have undertaken years of review and permitting, and is similar yet somewhat longer, than that of other similar state agencies such as the Delta Protection Commission and the Tahoe Regional Planning Authority.[...]

In 2016, a Superior Court decision invalidated the entire Delta Plan despite rejecting most of the legal challenges to the Delta Plan. The court invalidated the entire regulatory scheme based on three concerns that were unrelated to most of the Delta Plan's provisions. After years of litigation, the Council ultimately prevailed on appeal; however, future Delta Plan litigation remains likely. Wholesale rescission or suspension of the Delta Plan undermines the Legislature's intent for a legally enforceable Delta Plan and severely compromises the Council's ability to guide and shape significant projects in a way that balances the coequal goals of statewide water supply reliability and ecosystem restoration while protecting the Delta as an evolving place. A legislative severability clause would ensure an enforceable Delta Plan remains in effect, even if a portion is temporarily stayed in pending litigation or invalidated by a court.

SUPPORT

Delta Stewardship Council

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: SBX7 1, Simitian (Ch. 5, Stats. 2009) enacted the Sacramento-San Joaquin Delta Reform Act of 2009.

PRIOR VOTES:

Senate Natural Resources and Water Committee (Ayes 6, Noes 0)
