

**State of California
Delta Stewardship Council
715 P Street
Sacramento, CA 95814**

**Council Meetings
Title 23, California Code of Regulations
Chapter 1. General Provisions.
Additional of Article 2 (Commencing with Section 5000.10)**

Initial Statement of Reasons

Introduction

The Sacramento-San Joaquin Delta Reform Act of 2009 (Wat. Code, § 85000 et seq.; Delta Reform Act) establishes the Delta Stewardship Council (Council), which is required to develop, adopt, and commence implementation of a comprehensive management plan, known as the Delta Plan, for the Sacramento-San Joaquin Delta (Delta). The Delta Reform Act declares it is the intent of the Legislature to provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of the water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan.

The Delta Reform Act, among other things, (a) requires the Council to meet once a month in a public forum with at least two meetings each year required to be held at a location within the Delta, (b) requires the Council to select a chair from among the members to serve for not more than four years in that capacity, (c) authorizes the Council to select a vice chair, (d) authorizes any hearing by the Council to be conducted by any member of the Council upon authorization of the Council, (e) designates a majority of the voting members of the Council constitutes a quorum, (f) requires a majority vote of the voting membership to take action with respect to any other matter, unless otherwise specified in the Delta Reform Act, and (g) authorizes the Council to adopt regulations as needed to carry out its specified powers and duties.

The Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.; Bagley-Keene) declares it is the public policy of the state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so the public may remain informed. Bagley-Keene also authorizes a state body to adopt reasonable regulations to limit the total amount of time allocated for public comment on particular issues and for each individual speaker. Bagley-Keene requires a state body to

designate a clerk or other officer or employee of the state body to attend each closed session and keep and enter in a minute book a record of topics discussed and decisions made at the meeting, with the minute book being confidential and exempt from inspection pursuant to the California Public Records Act. (Gov. Code, § 7920.000 et seq.)

Problem Statement

As stated in the 2020 Public Participation Plan, public participation is fundamental to what the Council is and does. The Council work involves a large number of members of the public – including residents of the Delta community, California water users, conservation groups, the overall scientific community, and other state, federal, and local agencies that have responsibilities of the Delta – who are interested in the Council’s activities. Ensuring access regardless of background, location, ability, or status is a fundamental tenet of the Delta Reform Act and Bagley-Keene. The orderly, equitable, and efficient conduct of Council meetings promotes public transparency and access to the discussions and decisions of the Council.

The proposed regulations would establish procedures related to Council meetings to allow the Council to conduct its business, respond to the public more efficiently, and save Council staff time and resources. Specifically, the proposed regulations would (a) define specified terms; (b) authorize the Council, when there is less than a quorum in attendance, to meet as a committee of the Council, as specified; (c) require the Council to elect a chair and vice chair from the full Council membership when there is a vacancy in either position; (d) prohibit the chair and vice chair from serving more than four years in those roles; (e) require the chair to preside over all meetings of the Council, serve as presiding officer for appeals challenging certifications of consistency, and decide questions of procedure; (f) require the vice chair to serve in the chair’s absence; (g) require a majority vote of the full membership of the Council to overrule a decision of the chair, as specified; (h) authorize a person to submit a comment in writing on any agenda item, as specified; (i) require members of the public present at a Council meeting to be given an opportunity to make relevant oral comments on any agenda item; (j) authorize the chair or other presiding member to limit or preclude comments as necessary for the orderly conduct of business; (k) require the chief counsel, or their designee to attend all meetings of the Council and serve as parliamentarian and advise on questions of law; (l) require the minutes of a closed session taken by any person other than the clerk to be retained in a separate minute book by the chief counsel; and (m) designate the original evidence of actions taken at any meeting be a transcript, minutes, and resolutions approved in meetings.

Anticipated Benefits

The specific benefits of this rulemaking are that the Council's regulations related to Council meetings would improve public transparency, align with current practices surrounding original evidence, and make more efficient the conduct of Council meetings.

Statement of Specific Purpose and Necessity

Section 5000.10. Purpose.

Purpose

The purpose is to establish the scope of the article.

Necessity

The necessity is to establish an article outlining the orderly and effective conduct of Council meetings.

Section 5000.11, subd. (a). Definitions.

Purpose

The purpose is to clearly define "Act" to mean Bagley-Keene.

Necessity

The necessity is to clarify the meaning of the defined term as used in the regulations and to make the regulations more readable and easier to understand.

Section 5000.11, subd. (b).

Purpose

The purpose is to clearly define "Council" to mean the Delta Stewardship Council.

Necessity

The necessity is to clarify the meaning of the defined term as used in the regulations and to make the regulations more readable and easier to understand.

Section 5000.12. Quorum.

Purpose

The purpose is to establish what the Council may do when there is not a quorum present for the transaction of the business of the Council.

Necessity

The necessity, consistent with Robert's Rules of Order, is to allow the Council when there is less than a quorum in attendance to meet as a committee of the Council and subsequently submit their recommendations to the Council when a quorum is present.

Section 5000.13, subd. (a). Election and Duties of Chair and Vice Chair.

Purpose

The purpose is to ensure the orderly election of the chair and vice chair and to establish the vice chair's term.

Necessity

Water Code section 85200 requires the Council to select a chair from the members and limits the term of the chair to not more than four years. Water code section 85201 authorizes the Council to select a vice chair. The necessity of these proposed regulations is to establish the process by which the Council selects a chair and vice chair when there is a vacancy and to limit the term of the vice chair to not more than four years.

Section 5000.13, subd. (b).

Purpose

The purpose is to define the primary responsibilities of the chair.

Necessity

The necessity of subsection (b), paragraphs (1) and (3), is to specify the chair's responsibility to preside over all meetings and to decide questions of procedure at meetings.

Water Code section 85210 authorizes any hearing by the Council to be conducted by any member of the Council upon authorization of the Council. The necessity of subsection (b), paragraph (2), is to designate the chair as the presiding officer for hearings related to appeals challenging certifications of consistency.

Section 5000.13, subd. (c).

Purpose

The purpose is to establish the authority of the vice chair if the chair is absent or unable to preside during a Council meeting.

Necessity

The necessity is to require the vice chair to assume the duties of the chair when the chair is not present or able to preside.

Section 5000.14. Overruling the Chair.

Purpose

The purpose is to establish how a majority of the full membership of the Council may overrule a decision of the chair.

Necessity

Water Code section 85210.5 requires a majority vote of the voting membership of the Council to take action with respect to any matter, as specified. Robert's Rules of Order requires a majority vote of the body to overrule a chair. The necessity is to clarify that a decision made by the chair may only be overruled by a majority vote from the full membership of the Council with respect to the interpretation or applicability of these proposed regulations.

Section 5000.15, subd. (a). Public Comment.

Purpose

The purpose is to define the process by which a person may submit a written comment to the Council for consideration at a Council meeting.

Necessity

Government Code section 11125.7 requires the Council to provide an opportunity for members of the public to directly address the Council on each agenda item before the Council's discussion or consideration of the item. The necessity is to provide clear guidance to the public on how to submit written comments that address Council meeting agenda items. It establishes the deadline of noon, Pacific Time, the business day prior to the Council meeting to ensure all relevant comments are given due consideration by the Council members.

Section 5000.15, subd. (b).

Purpose

The purpose is to define the process by which a person may orally comment on an agenda item at a Council meeting.

Necessity

Government Code section 11125.7 requires the Council to provide an opportunity for members of the public to directly address the Council on each agenda item during the Council's discussion or consideration of the item. The necessity is to make clear that members of the public who are in attendance during a Council meeting will be given an opportunity to provide relevant oral comments to the Council regarding any agenda item.

Section 5000.15, subd. (c).

Purpose

The purpose is to authorize the chair or other presiding member of the Council to limit or preclude comments as necessary for the orderly conduct of business.

Necessity

Government Code section 11125.7 authorizes the Council to adopt reasonable regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker. Robert's Rules of Order authorizes a chair to enact speech limits in debate. The necessity is to grant the chair or other presiding member of the Council the authority to limit or preclude comments as necessary for the orderly conduct of Council business.

Section 5000.16, subd. (a). Duties of Chief Counsel and Clerk to Council.

Purpose

The purpose is to further define the role of the chief counsel at Council meetings.

Necessity

Robert's Rules of Order authorizes the appointment of a parliamentarian to serve in an advisory role to the presiding officer. The necessity is to require the chief counsel to serve as parliamentarian and as part of that role to attend all meetings of the Council and advise the Council on any questions of law that may arise during a Council meeting.

Section 5000.16, subd. (b).

Purpose

The purpose is to ensure a Council staff member is present to facilitate procedural requirements for the orderly conduct of Council meetings.

Necessity

The necessity is to specifically designate the clerk to the Council or their designee to be in attendance at all meetings, ensure public comment is conducted pursuant to Bagley-Keene and these proposed regulatory requirements, and maintain the record of all meetings and the vote of each member to ensure full public transparency.

Section 5000.16, subd. (c).

Purpose

The purpose is to designate the procedure of how to retain a confidential minute book maintained by any person other than the Council clerk for topics discussed and decisions made by the Council during closed session.

Necessity

Government Code section 11126.1 requires the clerk or designee to attend each closed session and record the topics discussed and decisions made in a confidential minute book. The necessity is to ensure the confidentiality of the minute book maintained by someone other than the clerk attending closed session by having the chief counsel retain that minute book.

Section 5000.17. Record of Meetings.

Purpose

The purpose is to establish what may serve as the original evidence of actions taken at a Council meeting.

Necessity

Water Code section 85200 requires the Council to hold monthly meetings in a public forum. Under general rules of evidence, original evidence is used to prove a statement was actually made. The necessity is to establish the transcript, minutes, and resolutions approved at a Council meeting as the original evidence of any action taken by the Council.

Technical, Theoretical, or Empirical Studies, Reports, or Similar Documents Relied Upon (Gov. Code, § 11346.2. subd. (b)(3).)

The Council has relied upon the following documents:

- Procedures for Delta Stewardship Council Meetings adopted at the April 22, 2010, Council meeting.
- Procedures for Delta Stewardship Council Meetings adopted and amended at the August 23, 2018, Council meeting.
- 2020 Public Participation Plan adopted at the June 25, 2020, Council meeting.
- Robert’s Rules of Order, 10th Edition.

The Council has conducted research and found that the proposed changes generally align with the practice and procedures of governing body meetings held by the State Energy Resources Conservation and Development Commission, the State Water Resources Control Board, the State Air Resources Board, and the Fish and Game Commission.

Consideration of Reasonable Alternatives, Including Those That Would Lessen Any Adverse Impact on Small Business (Gov. Code, § 11346.2. subd. (b)(4).)

No reasonable alternatives to the proposed regulations have been proposed that would lessen any adverse impact on small business or that would be less burdensome and equally effective in achieving the purposes of the regulations.

Economic Impact Analysis/Assessment (Gov. Code, §§ 11346.2, subd. (b)(2)(A); 11346.3, subd. (b).)

The Council has made an initial determination that the proposed regulations are unlikely to have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations are procedural in nature. They will impact the Council's use of time and resources and will allow the Council to effectively conduct its business while improving public transparency. The proposed regulations do not impact private persons, and there are no anticipated cost impacts to businesses associated with these proposed regulations. The proposed regulations would allow the Council to hold Council meetings in an effective and time-efficient manner. Therefore, any businesses that might be interested in the Council's meetings will continue to have the opportunity to listen and be engaged in those meetings.

The Creation or Elimination of Jobs within the State of California

The Council has made the initial determination that the proposed regulations would not result in the creation or elimination of jobs within the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The Council has made the initial determination that the proposed regulations would not result in the creation of new businesses or the elimination of existing businesses within the State of California.

The Expansion of Businesses Currently Operating within the State of California

The Council has made the initial determination that the proposed regulations would not result in the expansion of businesses currently operating within the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The Council has made the initial determination that the proposed regulations would not result in benefits or detriments to the health and welfare of California residents, worker safety, and the state's environment.

Facts, Evidence, Documents, Testimony, or Other Evidence Supporting Finding of No Significant Adverse Economic Impact Affecting Business (Gov. Code, § 11346.2, subd. (b)(5).)

The Council has made an initial determination that the proposed regulations are unlikely to have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations are procedural in nature. They will impact the Council's use of time and resources and allow the Council to effectively conduct its business while improving public transparency. The proposed regulations do not impact private persons, and there are no anticipated cost impacts to businesses associated with these proposed

regulations. These procedures would not have a direct or indirect impact on businesses as the intended purpose would be to make more efficient and to provide continued transparency to the conduct of Council meetings. Members of the public will continue to have access to the ordinary course of business that occurs at Council meetings.

For Further Information

Inquiries concerning all aspects of the rulemaking process, including the substance of the proposed regulations or other information upon which the rulemaking is based, should be directed to:

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