

## Senate Bill No. 1535

### CHAPTER 667

An act to amend Sections 104, 710, 710.5, 710.7, 711, 711.2, and 711.4 of, to add Section 106 to, to repeal Sections 208 and 209 of, and to repeal and add Sections 206 and 207 of, the Fish and Game Code, relating to fish and game.

[Approved by Governor September 29, 2006. Filed with  
Secretary of State September 29, 2006.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1535, Kuehl. Fish and game.

(1) The California Constitution creates the Fish and Game Commission. Existing law establishes the commission in the Resources Agency to perform specified functions. Existing law permits the commission to employ a secretary, and to hold specified meetings relating to commission regulations as to fish, amphibians, reptiles, mammals, and resident game birds.

This bill would permit the commission to employ a staff, including an executive director, to assist the commission in conducting its operations. The bill would require the commission to adopt and approve a conflict of interest code, and would prohibit a former commissioner from acting as an agent or attorney for any person for a period of 12 months after leaving office, as provided. The bill would delete the requirement that the commission hold specified meetings relating to commission regulations as to fish, amphibians, reptiles, mammals, and resident game birds, and instead would require the commission to hold no fewer than 10 regular meetings per calendar year. The bill would permit the commission to hold special meetings or hearings to receive additional input from the department and the public. The bill would require the commission to consider and adopt specified regulations relating to birds, mammals, fish, amphibia, and reptiles at a series of no fewer than 3 meetings, as provided.

(2) Existing law establishes the Department of Fish and Game in the Resources Agency, administered through the Director of Fish and Game. Existing law requires the department to impose and collect a filing fee to defray the costs of managing and protecting fish and wildlife trust resources, and specifies the amount to be levied. Existing law exempts from filing fees projects that fulfill specified conditions. Existing law also makes various findings and declarations relating to lack of department funding, user fees, and funding instability.

This bill would increase the amounts of filing fees collected by the department, and require the department to adjust the fees annually according to a specified index. The bill would require that a project have

no effect on fish and wildlife to be eligible for the fee exemption and would additionally exempt otherwise eligible projects, the costs of which are payable from the California Ocean Resource Enhancement Account. The bill would require the director and the Secretary of the Resources Agency to submit a report relating to all accounts and subaccounts within the Fish and Game Preservation Fund, and require the department to update its cost allocation plan to reflect the cost of program activities. The bill would require the county clerk of each county and the Office of Planning and Research to maintain an electronic and paper record of all environmental documents received, as provided. The bill would also modify various findings and declarations relating to lack of department funding, user fees, and funding instability.

(3) Existing law generally provides that a violation of regulations and laws relating to fish and game is a crime.

Because this bill would create a new crime by prohibiting former commissioners from performing specified functions, the bill would create a state-mandated local program.

(4) 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 no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 104 of the Fish and Game Code is amended to read:

104. The commission may employ a staff, including an executive director, to assist the commission in conducting its operations, but neither the commission nor its staff shall have or be given any powers in relation to the administration of the department.

SEC. 2. Section 106 is added to the Fish and Game Code, to read:

106. (a) The commission shall adopt and approve a Conflict of Interest Code pursuant to Article 3 (commencing with Section 87300) of Chapter 7 of Title 9 of the Government Code.

(b) For a period of 12 months after leaving office, a former commissioner shall be prohibited from acting as an agent or attorney for, or otherwise representing, any person before the commission by making any formal or informal appearance before, or any oral or written communication to, the commission.

SEC. 3. Section 206 of the Fish and Game Code is repealed.

SEC. 4. Section 206 is added to the Fish and Game Code, to read:

206. (a) The commission shall hold no fewer than ten regular meetings per calendar year. The commission may also hold special meetings or hearings to receive additional input from the department and the public.

(b) The commission shall announce the dates and locations of meetings for the year by January 1st of that year, or 60 days prior to the first meeting, whichever comes first. Meeting locations shall be accessible to the public and located throughout the state, with no more than two regular meetings to be held in Sacramento per year. To the extent feasible, meetings shall be held in state facilities. In setting the dates and locations for regular meetings, the commission shall also consider the following factors:

- (1) Recommendations of the department.
- (2) Opening and closing dates of fishing and hunting seasons.
- (3) The schedules of other state and federal regulatory agencies whose regulations affect the management of fish and wildlife of this state.

(c) The commission shall cause the notice of the schedule for regular meetings, and notice of any change in the date and location of a meeting, to be disseminated to the public in a manner that will result in broad dissemination, including, but not limited to, electronic distribution, mailings to interested parties, and publication in local newspapers of affected communities.

SEC. 5. Section 207 of the Fish and Game Code is repealed.

SEC. 6. Section 207 is added to the Fish and Game Code, to read:

207. (a) Except for emergency regulations, the commission shall consider and adopt regulations pursuant to Sections 203 and 205 at a series of no fewer than three meetings. These meetings may be regular or special meetings that are duly noticed to the public in accordance with subdivision (c) of Section 206 and the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(b) At the first meeting, the commission shall receive recommendations for regulations from its own members and staff, the department, other public agencies, and the public.

(c) At the second meeting, the commission shall devote time for open public discussion of proposed regulations presented at the first meeting. The department shall participate in this discussion by reviewing and presenting its findings regarding each regulation proposed by the public and by responding to objections raised pertaining to its proposed regulations. After considering the public discussion, the commission shall announce, prior to adjournment of the meeting, the regulations it intends to add, amend, or repeal.

(d) At the third meeting, the commission may choose to hear additional public discussion regarding the regulations it intends to adopt. At the meeting or within 20 days after the meeting, the commission shall add, amend, or repeal regulations relating to any recommendation received at the initial meeting it deems necessary to preserve, properly utilize, and maintain each species or subspecies.

(e) Within 45 days after adoption, the department shall publish and distribute regulations adopted pursuant to this section.

SEC. 7. Section 208 of the Fish and Game Code is repealed.

SEC. 8. Section 209 of the Fish and Game Code is repealed.

SEC. 9. Section 710 of the Fish and Game Code is amended to read:

710. The Legislature finds and declares that the department has in the past not been adequately funded to meet its mandates. The principal causes have been the fixed nature of the department's revenues in contrast with the rising costs resulting from inflation, the increased burden on the department to carry out its public trust responsibilities, and additional responsibilities placed on the department by the Legislature. This lack of funding has prevented proper planning and manpower allocation. The lack of funding has required the department to restrict warden enforcement and to defer essential management of lands acquired for wildlife conservation. The lack of funding for fish and wildlife conservation activities other than sport and commercial fishing and hunting activities has resulted in inadequate wildlife and habitat conservation and wildlife protection programs.

SEC. 10. Section 710.5 of the Fish and Game Code is amended to read:

710.5. (a) The Legislature finds and declares that the department continues to be inadequately funded to meet its mandates. While revenues have been declining, the department's responsibilities have increased in order to protect public trust resources in the face of increasing population and resource management demands. The department's revenues have been limited due to a failure to maximize user fees and inadequate non-fee-related funding. The limited department revenues have resulted in the inability of the department to effectively provide all of the programs and activities required under this code and to manage the wildlife resources held in trust by the department for the people of the state.

(b) The Legislature further finds and declares that the department has been largely supported by fees paid by those who utilize the resources held in trust by the department. It is the intent of the Legislature that, to the extent feasible, the department should continue to be funded by user fees. All fees collected by the department, including, but not limited to, recreational hunting and fishing licenses, landing taxes, commercial licenses, permits and entitlements, and other fees for use of the resources regulated or managed by the department, are user fees. To the extent that these fees are appropriated through the Budget Act for the purposes for which they are collected to provide services to the people of the State of California, these user fees are not subject to Article XIII B of the California Constitution.

(c) The Legislature further finds and declares that user fees are not sufficient to fund all of the department's mandates. To fulfill its mandates, the department must secure a significant increase in reliable funding, in addition to user fees.

SEC. 11. Section 710.7 of the Fish and Game Code is amended to read:

710.7. (a) The Legislature finds and declares all of the following:

(1) The department continues to face serious funding instability due to revenue declines from traditional user fees and taxes and the addition of new and expanded program responsibilities.

(2) Historically, the recreational and commercial fishing industry has funded much of the department's marine fisheries activities.

(3) As the state's population grows and development changes historic land uses, fish and wildlife continue to be depleted, necessitating a significant portion of the department's activities to be directed toward protecting fish and wildlife for the benefit of the people of the state.

(b) It is the intent of the Legislature to extend the current user-based funding system by allocating a portion of the marine resource protection costs to those who use and benefit from recreational and commercial use of the marine resources.

(c) It is the Legislature's intent that, notwithstanding Section 711, the department shall cooperate with the Legislature, recreational users, conservation organizations, the commercial fishing industry, and other interested parties to identify and propose new alternative sources of revenue to fund the department's necessary marine conservation, restoration, and resources management, and protection responsibilities.

(d) It is further the intent of the Legislature to identify new funding sources and to secure those sources to adequately fund the department's activities directed at protecting and managing wildlife for the people of the state.

SEC. 12. Section 711 of the Fish and Game Code is amended to read:

711. (a) It is the intent of the Legislature to ensure adequate funding from appropriate sources for the department. To this end, the Legislature finds and declares that:

(1) The costs of nongame fish and wildlife programs shall be provided annually in the Budget Act by appropriating money from the General Fund, through nongame user fees, and sources other than the Fish and Game Preservation Fund to the department for these purposes.

(2) The costs of commercial fishing programs shall be provided out of revenues from commercial fishing taxes, license fees, and other revenues, from reimbursements and federal funds received for commercial fishing programs, and other funds appropriated by the Legislature for this purpose.

(3) The costs of hunting and sportfishing programs shall be provided out of hunting and sportfishing revenues and reimbursements and federal funds received for hunting and sportfishing programs, and other funds appropriated by the Legislature for this purpose. These revenues, reimbursements, and federal funds shall not be used to support commercial fishing programs, free hunting and fishing license programs, or nongame fish and wildlife programs.

(4) The costs of managing lands managed by the department and the costs of wildlife management programs shall be supplemented out of revenues in the Native Species Conservation and Enhancement Account in the Fish and Game Preservation Fund.

(5) Hunting, sportfishing, and sport ocean fishing license fees shall be adjusted annually to an amount equal to that computed pursuant to Section 713. However, a substantial increase in the aggregate of hunting and sportfishing programs shall be reflected by appropriate amendments to the

sections of this code that establish the base sport license fee levels. The inflationary index provided in Section 713 may not be used to accommodate a substantial increase in the aggregate of hunting and sportfishing programs.

(b) The director and the Secretary of the Resources Agency shall, with the department's annual budget submittal to the Legislature, submit a report on the fund condition, including the expenditures and revenue, for all accounts and subaccounts within the Fish and Game Preservation Fund. The department shall also update its cost allocation plan to reflect the costs of program activities.

(c) For purposes of this article, "substantial increase" means an increase in excess of 5 percent of the Fish and Game Preservation Fund portion of the department's current year support budget, excluding cost-of-living increases provided for salaries, staff benefits, and operating expenses.

SEC. 13. Section 711.2 of the Fish and Game Code is amended to read:

711.2. (a) For purposes of this code, unless the context otherwise requires, "wildlife" means and includes all wild animals, birds, plants, fish, amphibians, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability and "project" has the same meaning as defined in Section 21065 of the Public Resources Code.

(b) For purposes of this article, "person" includes any individual, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, county, city and county, city, town, the state, and any of the agencies of those entities.

SEC. 14. Section 711.4 of the Fish and Game Code is amended to read:

711.4. (a) The department shall impose and collect a filing fee in the amount prescribed in subdivision (d) to defray the costs of managing and protecting fish and wildlife trust resources, including, but not limited to, consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), consulting pursuant to Section 21104.2 of the Public Resources Code, and other activities protecting those trust resources identified in the review pursuant to the California Environmental Quality Act.

(b) The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified. The department shall annually adjust the fees pursuant to Section 713.

(c) (1) All project applicants and public agencies subject to the California Environmental Quality Act shall pay a filing fee for each proposed project, as specified in subdivision (d).

(2) Notwithstanding paragraph (1), no filing fee shall be paid pursuant to this section if any of the following conditions exist:

(A) The project has no effect on fish and wildlife.

(B) The project is being undertaken by the department.

(C) The project costs are payable from any of the following sources:

(i) The Public Resources Account in the Cigarette and Tobacco Products Surtax Fund.

(ii) The California Wildlife, Coastal, and Park Land Conservation Fund of 1988.

(iii) The Habitat Conservation Fund.

(iv) The Fisheries Restoration Account in the Fish and Game Preservation Fund.

(v) The Commercial Salmon Stamp Account in the Fish and Game Preservation Fund.

(vi) Striped bass stamp funds collected pursuant to Section 7360.

(vii) The California Ocean Resource Enhancement Account.

(D) The project is implemented through a contract with either a nonprofit entity or a local government agency.

(3) Filing fees shall be paid at the time and in the amount specified in subdivision (d). Notwithstanding Sections 21080.5 and 21081 of the Public Resources Code, no project shall be operative, vested, or final, nor shall local government permits for the project be valid, until the filing fees required pursuant to this section are paid.

(d) The fees shall be in the following amounts:

(1) For a project which is statutorily or categorically exempt from the California Environmental Quality Act, including those certified regulatory programs which incorporate statutory and categorical exemptions, no filing fee shall be paid.

(2) For a project for which a negative declaration is prepared pursuant to subdivision (c) of Section 21080 of the Public Resources Code, the filing fee is one thousand eight hundred dollars (\$1,800). The filing fee shall be paid to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of that code or to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of that code, as appropriate.

(3) For a project with an environmental impact report prepared pursuant to the California Environmental Quality Act, the filing fee is two thousand five hundred dollars (\$2,500). The filing fee shall be paid to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of the Public Resources Code or to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of that code, as appropriate.

(4) For a project that is subject to a certified regulatory program pursuant to Section 21080.5 of the Public Resources Code, the filing fee is eight hundred fifty dollars (\$850). The filing fee shall be paid to the department prior to the filing of the notice of determination pursuant to Section 21080.5 of that code.

(e) The county clerk may charge a documentary handling fee of fifty dollars (\$50) per filing in addition to the filing fee specified in subdivision (d).

(1) The county clerk of each county and the Office of Planning and Research shall maintain a record, both electronic and in paper, of all environmental documents received. The record shall include, for each environmental document received, the name of each applicant or lead agency, the document filing number, the project name as approved by the lead agency, and the filing date. The record shall be made available for examination or audit by authorized personnel of the department during normal business hours.

(2) The filing fee imposed and collected pursuant to subdivision (d) shall be remitted monthly to the department within 30 days after the end of each month. The remittance shall be accompanied with the information required pursuant to paragraph (1). The amount of fees due shall be reported on forms prescribed and provided by the department.

(3) The department shall assess a penalty of 10 percent of the amount of fees due for any failure to remit the amount payable when due. The department may pursue collection of delinquent fees through the Controller's office pursuant to Section 12419.5 of the Government Code.

(f) Notwithstanding Section 12000, failure to pay the fee under subdivision (d) is not a misdemeanor. All unpaid fees are a statutory assessment subject to collection under procedures as provided in the Revenue and Taxation Code.

(g) Only one filing fee shall be paid for each project unless the project is tiered or phased, or separate environmental documents are required.

(h) This section does not preclude or modify the duty of the department to recommend, require, permit, or engage in mitigation activities pursuant to the California Environmental Quality Act.

(i) The permit process of the California Coastal Commission, as certified by the Secretary of the Resources Agency, is exempt from the payment of the filing fees prescribed by paragraph (5) of subdivision (d) insofar as the permits are issued under any of the following regulations:

(1) Subchapter 4 (commencing with Section 13136) of Chapter 5 of Division 5.5 of Title 14 of the California Code of Regulations.

(2) Subchapter 1 (commencing with Section 13200), Subchapter 3 (commencing with Section 13213), Subchapter 3.5 (commencing with Section 13214), Subchapter 4 (commencing with Section 13215), Subchapter 4.5 (commencing with Section 13238), Subchapter 5 (commencing with Section 13240), Subchapter 6 (commencing with Section 13250), and Subchapter 8 (commencing with Section 13255) of Chapter 6 of Division 5.5 of Title 14 of the California Code of Regulations.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the

definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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