



# Senate Select Committee on Infrastructure Streamlining and Workforce Equity Thursday, June 29 2023

## Issue:

Authorizes the take of fully protected species for infrastructure projects, as reflected in SB 147 (Ashby)

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## Summary:

This bill authorizes the take of fully protected species for certain infrastructure projects, as defined, by permit if specified conditions are met. These conditions include that take of the species is avoided, minimized, fully mitigated, and species are conserved, as provided, and that the project will not result in the extinction of the species. In addition, the permit applicant would be required to pay a permit application fee, and develop and implement a monitoring program and adaptive management plan, as specified.

Eligible infrastructure projects include the maintenance, repair, and improvement of both the State Water Project and critical regional or local water agency infrastructure; certain transportation projects; and wind and solar photovoltaic projects, including associated electric transmission, as provided. Ocean desalination and the through Delta conveyance project are not eligible projects. The Department of Fish and Wildlife is required to develop a plan to assess the population status of any fully protected species whose take would be authorized pursuant to this bill by July 1, 2024, as provided. The Department of Fish and Wildlife would also be required to provide an annual legislative report on the implementation of this permit program starting July 1, 2025. The authority to issue new take permits would sunset December 31, 2033 and existing take permits would remain in effect. There are additional conforming changes to statute, including the removal of three species from the fully protected species list that no longer warrant protection. There is an urgency clause in this measure.

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## Comments:

State law explicitly designates 37 species of birds, reptiles or amphibians, fish, and mammals as fully protected. These include, for example, the California condor, the rough sculpin, and the Guadalupe fur seal. Take of fully protected species is generally prohibited except where the species' protection and conservation is provided for in an applicable natural community conservation plan or for scientific research. In this context, "take" means to attempt to or to "hunt, pursue, catch, capture, or kill." Fully protected is considered a more restrictive protection standard than provided for threatened or endangered (i.e. "listed") species under the federal or state Endangered Species Acts. The fully protected designation pre-dates the Endangered Species Acts.

In the last 10 years, the Legislature has authorized the take of fully protected species on a case-by-case basis for certain projects approximately seven times. In these instances, take is authorized when take is minimized and fully mitigated, the species would not become extinct due to the take, and a monitoring program and adaptive management process is required, among other project-specific requirements. For example, take of the Lost River sucker and the shortnose sucker is authorized in conjunction with the decommissioning and removal of four dams on the Klamath River.