

Assembly Bill No. 140

CHAPTER 33

An act to add Chapter 1.699 (commencing with Section 5096.800) to Division 5 of the Public Resources Code, relating to financing disaster preparedness and flood prevention projects, by providing the funds necessary therefor through an election for the issuance and sale of bonds of the State of California and for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 19, 2006. Filed with
Secretary of State May 19, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 140, Nunez. Disaster Preparedness and Flood Prevention Bond Act of 2006.

Under existing law, various measures have been approved by the voters to provide funds for water projects, facilities, and programs.

This bill would enact the Disaster Preparedness and Flood Prevention Bond Act of 2006, which would, if approved by the voters, authorize the issuance and sale of bonds in the amount of \$4,090,000,000 for the purposes of financing disaster preparedness and flood prevention projects.

This bill would require the Secretary of State to submit this bond act to the voters at the November 7, 2006, statewide general election.

The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Chapter 1.699 (commencing with Section 5096.800) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 1.699. DISASTER PREPAREDNESS AND FLOOD PREVENTION BOND ACT OF 2006

Article 1. General Provisions

5096.800. This chapter shall be known and may be cited as the Disaster Preparedness and Flood Prevention Bond Act of 2006.

Article 2. Definitions

5096.805. Unless the context otherwise requires, the definitions set forth in this article govern the construction of this chapter.

- (a) “Board” means the Reclamation Board or successor entity.
- (b) “Committee” means the Disaster Preparedness and Flood Prevention Bond Finance Committee, created by Section 5096.957.
- (c) “Delta” means the area of the Sacramento-San Joaquin Delta as defined in Section 12220 of the Water Code.
- (d) “Department” means the Department of Water Resources.
- (e) “Facilities of the State Plan of Flood Control” means the levees, weirs, channels, and other features of the federal and state authorized flood control facilities located in the Sacramento and San Joaquin River drainage basin for which the board or the department has given the assurances of nonfederal cooperation to the United States required for the project, and those facilities identified in Section 8361 of the Water Code.
- (f) “Fund” means the Disaster Preparedness and Flood Prevention Bond Fund of 2006, created by Section 5096.806.
- (g) “Project levees” means the levees that are part of the facilities of the State Plan of Flood Control.
- (h) “Restoration” means the improvement of a physical structure or facility and, in the case of natural system and landscape features includes, but is not limited to, a project for the control of erosion, the control and elimination of exotic species, including prescribed burning, fuel hazard reduction, fencing out threats to existing or restored natural resources, road elimination, and other plant and wildlife habitat improvement to increase the natural system value of the property. A restoration project shall include the planning, monitoring, and reporting necessary to ensure successful implementation of the project objectives.
- (i) “State General Obligation Bond Law” means the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code).
- (j) “State Plan of Flood Control” means the state and federal flood control works, lands, programs, plans, conditions, and mode of maintenance and operations of the Sacramento River Flood Control Project described in Section 8350 of the Water Code, and of flood control projects in the Sacramento River and San Joaquin River watersheds authorized pursuant to Article 2 (commencing with Section 12648) of Chapter 2 of Part 6 of Division 6 of the Water Code for which the board or the department has provided the assurances of nonfederal cooperation to the United States, which shall be updated by the department and compiled into a single document entitled “The State Plan of Flood Control.”
- (k) “Urban area” means any contiguous area in which more than 10,000 residents are protected by project levees.

Article 3. Disaster Preparedness and Flood Prevention Bond Fund of 2006

5096.806. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the Disaster Preparedness and Flood Prevention Bond Fund of 2006, which is hereby created.

Article 4. Disaster Preparedness and Flood Prevention Program

5096.820. (a) The sum of four billion ninety million dollars (\$4,090,000,000) shall be available, upon appropriation therefor, for disaster preparedness and flood prevention projects pursuant to this article.

(b) In expending funds pursuant to this article, the Governor shall do all of the following:

(1) Secure the maximum feasible amounts of federal and local matching funds to fund disaster preparedness and flood prevention projects in order to ensure prudent and cost-effective use of these funds to the extent that this does not prohibit timely implementation of this article.

(2) Prioritize project selection and project design to achieve maximum public benefits from the use of these funds.

(3) In connection with the submission of the annual Governor's Budget, submit an annual Bond Expenditure Disaster Preparedness and Flood Prevention Plan that describes in detail the proposed expenditures of bond funds, the amount of federal appropriations and local funding obtained to fund disaster preparedness and flood prevention projects to match those expenditures, and an investment strategy to meet long-term flood protection needs and minimize state taxpayer liabilities from flooding.

5096.821. Three billion dollars (\$3,000,000,000) shall be available, upon appropriation to the department, for the following purposes:

(a) The evaluation, repair, rehabilitation, reconstruction, or replacement of levees, weirs, bypasses, and facilities of the State Plan of Flood Control by all of the following actions:

(1) Repairing erosion sites and removing sediment from channels or bypasses.

(2) Evaluating and repairing levees and any other facilities of the State Plan of Flood Control.

(3) Implementing mitigation measures for a project undertaken pursuant to this subdivision. The department may fund participation in a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code to facilitate projects authorized by this subdivision.

(b) Improving or adding facilities to the State Plan of Flood Control to increase levels of flood prevention for urban areas, including all related costs for mitigation and infrastructure relocation. Funds made available by this subdivision may be expended for state financial participation in federal and state authorized flood control projects, feasibility studies and

design of federal flood damage reduction and related projects, and reservoir reoperation and groundwater flood storage projects. Not more than two hundred million dollars (\$200,000,000) may be expended on a single project, excluding authorized flood control improvements to Folsom Dam.

(c) (1) To reduce the risk of levee failure in the delta.

(2) The funds made available for the purpose specified in paragraph (1) shall be expended for both of the following purposes:

(A) Local assistance under the delta levee maintenance subventions program under Part 9 (commencing with Section 12980) of Division 6 of the Water Code, as that part may be amended.

(B) Special flood protection projects under Chapter 2 (commencing with Subdivision 12310) of Part 4.8 of Division 6 of the Water Code, as that chapter may be amended.

5096.824. (a) Five hundred million dollars (\$500,000,000) shall be available, upon appropriation to the department, for payment for the state's share of the nonfederal costs, and related costs, of flood control and flood prevention projects authorized under any of the following:

(1) The State Water Resources Law of 1945 (Chapter 1 (commencing with Section 12570) and Chapter 2 (commencing with Section 12639) of Part 6 of Division 6 of the Water Code).

(2) The Flood Control Law of 1946 (Chapter 3 (commencing with Section 12800) of Part 6 of Division 6 of the Water Code).

(3) The California Watershed Protection and Flood Prevention Law (Chapter 4 (commencing with Section 12850) of Part 6 of Division 6 of the Water Code).

(b) The costs described in subdivision (a) include costs incurred in connection with either of the following:

(1) The granting of credits or loans to local agencies, as applicable, pursuant to Sections 12585.3, 12585.4 of, subdivision (d) of Section 12585.5 of, and Sections 12866.3 and 12866.4 of, the Water Code.

(2) The implementation of Chapter 3.5 (commencing with Section 12840) of Part 6 of Division 6 of the Water Code.

(c) The funds made available by this section shall be allocated only to projects that are not part of the State Plan of Flood Control.

5096.825. Two hundred ninety million dollars (\$290,000,000) shall be available, upon appropriation, for the protection, creation, and enhancement of flood protection corridors and bypasses through any of the following actions:

(a) Acquiring easements and other interests in real property to protect or enhance flood protection corridors and bypasses while preserving or enhancing the agricultural use of the real property.

(b) Constructing new levees necessary for the establishment of a flood protection corridor or bypass.

(c) Setting back existing flood control levees, and in conjunction with undertaking those setbacks, strengthening or modifying existing levees and weirs.

(d) Relocating or flood proofing structures necessary for the establishment of a flood protection corridor.

(e) Acquiring interests in, or providing incentives for maintaining agricultural uses of, real property that is located in a flood plain that cannot reasonably be made safe from future flooding.

(f) Acquiring easements and other interests in real property to protect or enhance flood protection corridors while preserving or enhancing the wildlife value of the real property.

(g) Flood plain mapping and related activities, including both of the following:

(1) The development of flood hazard maps, including all necessary studies and surveys.

(2) Alluvial fan flood plain mapping.

5096.827. Three hundred million dollars (\$300,000,000) shall be available, upon appropriation to the department, for grants for stormwater flood management projects that meet all of the following requirements:

(a) Have a nonstate cost share of not less than 50 percent.

(b) Are not part of the State Plan of Flood Control.

(c) Are designed to manage stormwater runoff to reduce flood damage and where feasible, provide other benefits, including groundwater recharge, water quality improvement, and ecosystem restoration.

(d) Comply with applicable regional water quality control plans.

(e) Are consistent with any applicable integrated regional water management plan.

5096.828. Funds provided by this article are only available for appropriation until July 1, 2016, and at that time the amount of indebtedness authorized by this chapter shall be reduced by the amount of funds provided by this article that have not been appropriated.

Article 16. Program Expenditures

5096.953. The Secretary of the Resources Agency shall provide for an independent audit of expenditures pursuant to this chapter to ensure that all moneys are expended in accordance with the requirements of this chapter. The secretary shall publish a list of all program and project expenditures pursuant to this chapter not less than annually, in written form, and shall post an electronic form of the list on the Resources Agency's Internet Web site.

Article 17. Fiscal Provisions

5096.955. (a) Bonds in the total amount of four billion ninety million dollars (\$4,090,000,000), not including the amount of any refunding bonds issued in accordance with Section 5096.966, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General

Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute valid and binding obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) The Treasurer shall sell the bonds authorized by the committee pursuant to this section. The bonds shall be sold upon the terms and conditions specified in a resolution to be adopted by the committee pursuant to Section 16731 of the Government Code.

5096.956. The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law, and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

5096.957. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this chapter, the Disaster Preparedness and Flood Prevention Bond Finance Committee is hereby created. For the purposes of this chapter, the Disaster Preparedness and Flood Prevention Bond Finance Committee is “the committee” as that term is used in the State General Obligation Bond Law. The committee consists of the Controller, the Director of Finance, and the Treasurer, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the department is designated the “board.”

5096.958. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter to carry out this chapter and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

5096.959. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

5096.960. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum that is necessary to carry out Section 5096.963, appropriated without regard to fiscal years.

5096.961. The department may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee has, by resolution, authorized to be sold for the purpose of carrying out this chapter. The department shall execute those documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the department in accordance with this chapter.

5096.962. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and for the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds, as may be required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

5096.963. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, with interest at the rate earned by the money in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

5096.964. All money deposited in the fund that is derived from premium and accrued interest on bonds sold pursuant to this chapter shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

5096.965. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, the cost of bond issuance shall be paid out of the bond proceeds. These costs shall be shared proportionally by each program funded through this bond act.

5096.966. The bonds issued and sold pursuant to this chapter may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the electors of the state for the issuance of the bonds under this chapter shall include approval of the issuance of any bonds issued to refund any bonds

originally issued under this chapter or any previously issued refunding bonds.

5096.967. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not “proceeds of taxes” as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SEC. 2. (a) Section 1 of this act shall become operative upon the adoption by the voters of the Disaster Preparedness and Flood Prevention Bond Act of 2006, as set forth in Section 1 of this act.

SEC. 3. Notwithstanding Sections 13115 and 13117 of the Elections Code, the following measures shall be placed on the ballot for the November 7, 2006, statewide general election in the following order:

(a) Senate Constitutional Amendment No. 7 of the 2005–06 Regular Session shall be placed first on the ballot and shall be designated as Proposition 1A.

(b) The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 shall be placed second on the ballot and shall be designated as Proposition 1B.

(c) The Housing and Emergency Shelter Trust Fund Act of 2006 shall be placed third on the ballot and shall be designated as Proposition 1C.

(d) The Kindergarten-University Public Education Facilities Bond Act of 2006 shall be placed fourth on the ballot and shall be designated as Proposition 1D.

(e) The Disaster Preparedness and Flood Prevention Bond Act of 2006 shall be placed fifth on the ballot and shall be designated as Proposition 1E.

SEC. 4. (a) Notwithstanding any other provision of law, all ballots of the November 7, 2006, statewide general election shall have printed thereon and in a square thereof, exclusively, the words: “Disaster Preparedness and Flood Prevention Bond Act of 2006” and in the same square under those words, the following in 8-point type:

“This act rebuilds and repairs California’s most vulnerable flood control structures to protect homes and prevent loss of life from flood-related disasters, including levee failures, flash floods, and mudslides; it protects California’s drinking water supply system by rebuilding delta levees that are vulnerable to earthquakes and storms; by authorizing a \$4.09 billion dollar bond act.”

Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

(b) Notwithstanding Sections 13247 and 13281 of the Elections Code, the language in subdivision (a) shall be the only language included in the ballot label for the condensed statement of the ballot title, and the Attorney General shall not supplement, subtract from, or revise that language, except that the Attorney General may include the financial impact summary prepared pursuant to Section 9087 of the Elections Code and

Section 88003 of the Government Code. The ballot label is the condensed statement of the ballot title and the financial impact summary.

(c) Where the voting in the election is done by means of voting machines used pursuant to law in the manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choices by means thereof are in compliance with this section.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for the submission of Section 1 of this act to the voters at the November 7, 2006, statewide general election, and to provide for improved disaster preparedness and flood prevention, as soon as possible, it is necessary that this act take effect immediately.