

AMENDED IN ASSEMBLY APRIL 27, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1899

**Introduced by Assembly Member Wolk
(Coauthor: Assembly Member Jones)**

January 25, 2006

An act to add Section 66455.2 to the Government Code, and to add Part 6 (commencing with Section 9590) to Division 5 of the Water Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1899, as amended, Wolk. Land use: flood protection.

(1) Existing law requires a city or county that determines that a project, as defined, is subject to the California Environmental Quality Act to identify any public water system that may supply water for the project and to request that public water system to prepare a specified water supply assessment. Existing law, the Subdivision Map Act, requires a local agency, to the extent it is authorized to approve a tentative map that includes a subdivision, as defined, to include as a condition in the tentative map that a sufficient water supply is or will become available prior to completing the subdivision, as determined by the applicable public water system or the local agency authorized to approve the tentative map.

This bill would require a city or county that determines that a project, as defined, will require a certain environmental document under the California Environmental Quality Act and meets certain conditions, to identify all relevant flood management agencies and to

require those agencies to submit to the city or county a specified flood protection assessment. The bill would provide that the flood management agency is not subject to civil liability in connection with the preparation of the flood protection assessment under certain circumstances ~~and would authorize the agency to require the city or county to indemnify and hold the agency harmless prior to submitting the assessment.~~ The bill would require the city or county to include in an environmental document prepared for the project the flood protection assessment, or a specified description, a discussion as to whether the flood protection for the lands upon which the project is proposed to be located currently meets a specified 200-year flood protection standard, and other related information. If the city or county is unable to conclude that flood protection for the lands currently meets that standard, the bill would require the city or county, flood management agency, and project applicant to work together to ensure that the lands upon which the project is proposed to be located will meet that flood protection standard prior to, or within 5 years of, those lands being developed.

The bill would revise the Subdivision Map Act to require the Reclamation Board or the Department of Water Resources to file with the legislative body of any local agency having jurisdiction, a map or amended map of any flood hazard zone in the watersheds of the Sacramento River or the San Joaquin River within 30 days of learning of a proposed project, as defined, located within that flood hazard zone and not otherwise constituting infill. The bill would require the local agency to transmit a copy of the proposed tentative map for the project to the board and affected flood management agencies. Within 90 days after receiving a copy of a proposed subdivision map, the board would be required to verify whether the lands upon which the project is proposed to be located will meet that specified 200-year flood protection standard within 5 years of issuance of the final map and provide specified information. The bill would provide that the board would not be subject to civil liability in connection with the preparation of the flood protection verification under certain circumstances ~~and would authorize the board to require the city or county to indemnify and hold the state harmless prior to submitting the verification.~~ In the absence of a written verification by the board, the bill would authorize the city or county to make a finding that the described lands will meet that requirement.

By imposing duties on cities, counties, and flood management agencies in connection with the bill's provisions, the bill would impose a state-mandated local program.

(2) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) In the central valley, the State of California has assumed
4 the primary responsibility for protecting its citizens from floods.
5 The state has worked closely with the United States Army Corps
6 of Engineers to develop, construct, and maintain flood control
7 projects.

8 (b) Local governments have the primary responsibility for
9 planning and approving various land uses within their
10 jurisdictions. The land use planning function, however, is often
11 disconnected from the operations of state or local agencies that
12 protect the jurisdiction from floods. As a result, land use
13 decisions are based on limited information regarding flood
14 management and protection.

15 (c) In order to connect local government land use decisions
16 with state flood management policies, financing, and facilities, it
17 is necessary for local government land use decisions to include
18 confirmation that new developments, outside existing population
19 centers, will enjoy sufficient protection from flood hazards.

20 SEC. 2. Section 66455.2 is added to the Government Code, to
21 read:

1 66455.2. (a) The Reclamation Board or the Department of
2 Water Resources shall file with the legislative body of any local
3 agency having jurisdiction, a map or amended map of any flood
4 hazard zone in the watersheds of the Sacramento River or San
5 Joaquin River, within 30 days of when the board or the
6 department learns of a proposed project located within that flood
7 hazard zone and not otherwise constituting infill. The local
8 agency having jurisdiction shall issue a receipt for the flood
9 hazard zone map.

10 (b) Within 30 days of a tentative map application being
11 determined to be complete pursuant to Section 65943 for a
12 proposed subdivision located, in whole or in part, within the
13 territory outlined on the flood hazard zone map, the local agency
14 shall transmit one copy of the proposed tentative map to the
15 Reclamation Board and to all flood management agencies that
16 operate or maintain flood protection facilities that provide some
17 level of flood protection to the lands upon which the project is
18 proposed to be located.

19 (c) Within 90 days after receiving a copy of a proposed
20 subdivision map, the Reclamation Board shall verify, in writing,
21 whether the lands upon which the project is proposed to be
22 located meet the 200-year standard on or before, or are
23 reasonably anticipated to meet the 200-year standard within five
24 years of, the date on which a final map is issued for the project. If
25 the board determines that these lands are not anticipated to meet
26 the 200-year standard within five years of issuance of the final
27 map, the board shall recommend conditions to any proposed
28 tentative map that would contribute to the project's achievement
29 of the 200-year standard. The board may charge the project
30 applicant for the costs associated with making the verification
31 and recommendations to the local agency regarding flood
32 protection. The local agency having jurisdiction shall consider
33 any recommendations before acting on the tentative map.

34 (d) If the written verification provided by the Reclamation
35 Board indicates that the lands upon which the project is proposed
36 to be located either will not meet or there is insufficient
37 information to verify compliance with the 200-year standard as
38 provided in subdivision (c), or if a written verification is not
39 provided by the board, the city or county may make a finding,
40 after consideration of the written verification if provided by the

1 board, that additional information not supplied by the board
2 demonstrates that the project meets the 200-year standard.

3 (e) If the Reclamation Board verifies that the lands upon
4 which the project is proposed to be located meet the 200-year
5 standard as provided in subdivision (c), the written verification
6 shall be supported by evidence that may include, but need not be
7 limited to, any of the following:

8 (1) A flood protection information assessment that was
9 completed pursuant to Part 6 (commencing with Section 9590) of
10 Division 5 of the Water Code.

11 (2) Other information relating to the sufficiency of the flood
12 protection that contains analytical information that is
13 substantially similar to the flood protection assessment required
14 by Part 6 (commencing with Section 9590) of Division 5 of the
15 Water Code.

16 (3) Information relating to any of the following:

17 (A) A capital outlay program for the financing, construction,
18 and maintenance of the flood protection facilities that has been
19 adopted by the applicable governing body.

20 (B) Securing of applicable federal, state, and local permits for
21 the construction of necessary infrastructure.

22 (C) Any necessary regulatory approvals that are required in
23 order to be able to construct needed facilities.

24 (f) In making any findings or determinations under this
25 section, or in working to improve the flood protection to be
26 provided to the project, the city or county may work in
27 conjunction with the project applicant and any flood management
28 agency to ensure necessary flood protection.

29 (g) Nothing in this section precludes the city or county, at the
30 request of the project applicant, from making a determination
31 that the lands upon which the project is proposed to be located
32 meet the 200-year standard as provided in subdivision (c).

33 (h) The Reclamation Board shall not be subject to civil
34 liability in connection with the preparation of the flood protection
35 verification if the verification is based upon substantial evidence
36 in accordance with subdivision (e). ~~The board may require that~~
37 ~~the city or county indemnify and hold the state harmless prior to~~
38 ~~submitting any verification required under this section.~~

1 (i) (1) Unless, the context requires otherwise, the definitions
2 set forth in this subdivision govern the construction of this
3 section.

4 (2) “Flood management agency” means any public entity,
5 including, but not limited to, a reclamation district, flood control
6 district, levee district, county flood control district, city, county,
7 joint powers agency, state maintenance area, state agency, or
8 other public agency that provides flood protection services to an
9 area in which not less than 100 people reside.

10 (3) “Flood hazard zone” means an area subject to flooding that
11 is delineated as either a special hazard area or an area of
12 moderate or minimal hazard on an official flood insurance rate
13 map issued by the Federal Emergency Management Agency.

14 (4) “Infill” means any residential, commercial, or industrial
15 development proposed for a site that is within an urbanized area
16 and has been previously developed for urban uses, or where
17 virtually all the immediate contiguous properties surrounding the
18 development site are, or previously have been, developed for
19 urban uses, or housing projects that are exclusively for very low
20 and low-income households.

21 (5) “Project” means a proposed residential development of
22 more than 25 dwelling units, not otherwise constituting infill, that
23 is located in a flood hazard zone, for which both of the following
24 apply:

25 (A) The anticipating flood levels exceed three feet.

26 (B) The Reclamation Board has jurisdiction.

27 (6) “200-year standard” means protection that is sufficient to
28 withstand flooding that has a 1 in 200 chance of occurring in any
29 given year.

30 (j) Nothing in this section shall be construed in a manner that
31 in any way impairs the authority of the board to approve plans of
32 reclamation, flood control, drainage, improvement, dredging, or
33 work pursuant to Section 8710 of the Water Code or any other
34 provision of law.

35 SEC. 3. Part 6 (commencing with Section 9590) is added to
36 Division 5 of the Water Code, to read:

1 PART 6. FLOOD PROTECTION INFORMATION
2 ASSESSMENTS
3

4 9590. (a) A city or county shall comply with this part upon
5 determining that all of the following apply to a project:

6 (1) The project will require an environmental impact report,
7 negative declaration, or mitigated negative declaration under the
8 California Environmental Quality Act (Division 13 (commencing
9 with Section 21000) of the Public Resources Code).

10 (2) The project is located within a flood hazard zone that is
11 subject to the jurisdiction of the Reclamation Board.

12 (3) The project involves a proposed residential development of
13 more than 25 dwelling units, not otherwise constituting infill.

14 (b) Upon making the determinations described in subdivision
15 (a), a city or county shall identify all relevant flood management
16 agencies that operate or maintain flood protection facilities that
17 provide some level of flood protection to the lands upon which
18 the project is proposed to be located. If the city or county is not
19 able to identify any flood management agency, the city or county
20 shall be deemed to be the flood management agency for purposes
21 of this part.

22 (c) Upon identification of all relevant flood management
23 agencies, the city or county shall prepare a notice to be provided
24 to the flood management agencies that describes the location of
25 the proposed project, the scale and scope of the project, and any
26 other information deemed by the city or county to be useful to
27 the flood management agency in preparing the assessment
28 required under this part. The notice shall include a request for
29 flood protection assessment.

30 (d) (1) Within 90 days of receipt of the notice and request
31 from the city or county for the flood protection assessment, the
32 flood management agency shall submit to the city or county a
33 flood protection assessment.

34 (2) Notwithstanding paragraph (1), if the city or county
35 identifies and notifies more than one relevant flood management
36 agency, the flood management agencies may agree that one flood
37 management agency will respond on behalf of all identified and
38 notified flood management agencies.

39 (3) The flood protection assessment shall include copies of, or
40 a reference to, all existing flood management reports or studies

1 that, to the knowledge of the flood management agency, provide
2 information specifically relevant to the level of flood protection
3 available to the lands upon which the project is proposed to be
4 located.

5 (4) (A) The flood protection assessment may include, at the
6 discretion of the flood management agency, a qualitative or
7 quantitative analysis of the level of flood protection available to
8 the lands upon which the project is proposed to be located along
9 with a description of the actions that may be taken by the flood
10 management agency to increase the level of flood protection on
11 behalf of the lands upon which the project is proposed to be
12 located.

13 (B) If the information described in this paragraph is provided,
14 the flood protection assessment may include other relevant
15 information, including information relevant to any capital outlay
16 program for financing new flood protection facilities, federal,
17 state, and local permits required for the construction of necessary
18 facilities, and any necessary regulatory approvals that are
19 required in order to be able to construct those facilities.

20 (C) If the flood management agency elects to provide the
21 information described in this paragraph, the flood management
22 agency may provide that information to the city or county at a
23 time after the 90-day period described in paragraph (1) has
24 expired. In addition, if the flood management agency elects to
25 provide this information, the flood management agency may
26 contract with the project applicant to charge the actual reasonable
27 costs of preparing and providing the information described in this
28 subdivision.

29 (e) If the flood management agency fails to submit the flood
30 protection assessment, the city or county may seek a writ of
31 mandamus to compel the governing body of the flood
32 management agency to comply with this part relating to the
33 submission of the flood protection assessment.

34 (f) Notwithstanding any other provisions of this part, if a
35 project has been the subject of a flood protection assessment that
36 complies with the requirements of this part, no additional flood
37 protection assessment shall be required for subsequent projects
38 that were part of a larger project for which a flood protection
39 assessment was completed in accordance with this part unless
40 significant new information becomes available that was not

1 known and could not have been known at the time the assessment
2 was prepared.

3 (g) The flood management agency shall not be subject to civil
4 liability in connection with the preparation of the flood protection
5 assessment if the assessment is based on all existing, relevant
6 information available to the agency. ~~The agency may require the
7 city or county to indemnify and hold the agency harmless prior to
8 submitting any assessment required by this part.~~

9 9591. (a) A city or county shall include in an environmental
10 document prepared for the project pursuant to Division 13
11 (commencing with Section 21000) of the Public Resources Code,
12 all of the following:

13 (1) The flood protection assessment provided pursuant to
14 Section 9590 or a description of the conclusions of the flood
15 protection assessment, including, but not limited to, estimates of
16 the probability or risk of flooding on the lands on which the
17 project is located.

18 (2) A discussion as to whether, based upon the existing record,
19 flood protection for the lands upon which the project is proposed
20 to be located currently meets the 200-year standard. If the city or
21 county is unable to include a statement that flood protection for
22 the lands upon which the project is proposed to be located
23 currently meets the 200-year standard, the city or county shall
24 include an explanation as to the reasons it is unable to include the
25 statement.

26 (3) All available information regarding the likely depth of
27 flooding in the event of a levee failure.

28 (b) For the purposes of carrying out subdivision (a), the city or
29 county may include an evaluation of information set forth in the
30 flood protection assessment.

31 (c) If the city or county is unable to include in the draft or final
32 environmental document a statement that flood protection for the
33 lands upon which the project is proposed to be located currently
34 meets the 200-year standard, or includes a statement that the
35 flood protection does not meet the 200-year standard, the city or
36 county, flood management agency, and project applicant shall
37 work together to ensure that the lands upon which the project is
38 proposed to be located will meet the 200-year standard prior to,
39 or within five years of, those lands being developed.

1 9592. Unless the context requires otherwise, the definitions
2 set forth in this section govern construction of this part.

3 (a) “Flood management agency” means any public entity,
4 including, but not limited to, a reclamation district, flood control
5 district, levee district, county flood control district, city, county,
6 joint powers agency, state maintenance area, state agency, or
7 other public agency that provides flood protection services to an
8 area in which not less than 100 people reside.

9 (b) “Infill” means any residential, commercial, or industrial
10 development proposed for a site that is within an urbanized area
11 and has been previously developed for urban uses, or where
12 virtually all the immediate contiguous properties surrounding the
13 development site are, or previously have been, developed for
14 urban uses, or housing projects that are exclusively for very low
15 and low-income households.

16 (c) “Two hundred year standard” means protection that is
17 sufficient to withstand flooding that has a one in two hundred
18 chance of occurring in any given year.

19 SEC. 4. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 a local agency or school district has the authority to levy service
22 charges, fees, or assessments sufficient to pay for the program or
23 level of service mandated by this act, within the meaning of
24 Section 17556 of the Government Code.

25 If the Commission on State Mandates determines that this act
26 contains other costs mandated by the state, reimbursement to
27 local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code