

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1796

Introduced by Senator Florez

February 24, 2006

An act to amend Sections 8521, 8550, 8551, 8552, ~~and 8554 of, 8554, 8575, 12878, and 12878.1 of~~, to amend the heading of Part 4 (commencing with Section 8520) of Division 5 of, to add Sections ~~8577, 8578, and 8614.5~~ 8523, 8577, 8578, 8614.5, and 8614.6 to, and to repeal and add Article 2 (commencing with Section 8580) to Chapter 2 of Part 4 of Division 5 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1796, as amended, Florez. Reclamation Board.

(1) Existing law establishes the 7-member Reclamation Board in the Department of Water Resources. Existing law requires the board members to be appointed and to serve at the pleasure of the Governor. Existing law prescribes compensation for each board member for time spent attending meetings of the board in the amount of \$100, except as specified. Existing law requires the board to elect one of its members as president. Existing law requires the board to appoint a secretary, who may be a board member, and authorizes the board to appoint a general manager, a chief engineer, and an assistant secretary. Existing law authorizes the board to employ certain other employees.

This bill would rename the Reclamation Board the Central Valley Flood Protection Board. The bill would declare that the board is a state agency that is separate from the department and would require the board to function independently of the department.

The board would require the board to consist of 9 members. The bill would require 7 members to be appointed by the Governor, subject to

Senate confirmation, 4 of whom would be required to meet specified eligibility requirements and 3 of whom would be designated as public members. The bill would require one board member to be appointed by the Senate Rules Committee and one board member to be appointed by the Speaker of the Assembly and would designate those 2 members as public members. The bill, with a certain exception, would require the board members to serve 4-year terms. The bill would require the board members to receive a salary identical to that received by members of the State Air Resources Board. The bill would require the Governor to select one of the board members as president. ~~The bill would subject the board members to specified requirements relating to conflict of interest and ex parte communications.~~

The bill would repeal provisions relating to the appointment or employment of specified personnel and, instead, authorize the board to appoint an executive officer and to employ legal counsel and other necessary staff.

(2) Existing law provides that a member of the board having an interest in lands within the drainage district is not disqualified from voting to execute any part of the plans of flood control or from carrying out the objects of the board.

This bill would instead require that a member of the board having an interest in lands within the drainage district, recuse himself or herself from voting to execute those parts of the plans of flood control that would affect those lands. The bill would subject the board members to specified requirements relating to conflict of interest and ex parte communications.

~~(2)~~

(3) Existing law authorizes the board to engage in various flood control activities along the Sacramento River, San Joaquin River, their tributaries, and related areas.

This bill would require the board to prepare a report to the Governor and Legislature, by December 31, 2008, on the status of the state flood control system. The bill would require the board to conduct at least 2 public meetings to consider public comments prior to finalizing the report, and would require the department to assist the board in developing the necessary information for the report. The bill would require the board, on or before January 1, ~~2008~~ 2009, to prepare and adopt a strategic flood control plan. The bill would require the board to establish and update, every 5 years, standards for

levee construction, operation, and maintenance. The bill would require the board to review local and regional land use plans to ensure their compliance with flood protection and public safety standards adopted by the board. The bill would require the board to review and revise, as necessary, flood control plans adopted by local public agencies. By establishing requirements on local public agencies in connection with flood control plans, the bill would impose a state-mandated local program. The bill would prohibit the board from allocating any funds to a local public agency for a flood control project unless the board determines that project ensures adequate flood protection.

~~(3)~~

(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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 heading of Part 4 (commencing with
2 Section 8520) of Division 5 of the Water Code is amended to
3 read:

4
5 PART 4. THE ~~RECLAMATION~~ CENTRAL VALLEY FLOOD
6 PROTECTION BOARD

7
8 SECTION 1.

9 SEC. 2. Section 8521 of the Water Code is amended to read:
10 8521. "Board" means the Central Valley Flood Protection
11 Board. Any reference to the Reclamation Board in this or any
12 other code means the Central Valley Flood Protection Board.

13 SEC. 3. Section 8523 is added to the Water Code, to read:
14 8523. "State Plan of Flood Control" means the state and
15 federal flood control works, lands, programs, plans, conditions,
16 and mode of maintenance and operations of the Sacramento

1 *River Flood Control Project described in Section 8350, and of*
2 *flood control projects in the Sacramento River and San Joaquin*
3 *River watersheds authorized pursuant to Article 2 (commencing*
4 *with Section 12648) of Chapter 2 of Part 6 of Division 6 for*
5 *which the board or the department has provided the nonfederal*
6 *assurances to the United States.*

7 ~~SEC. 2.~~

8 SEC. 4. Section 8550 of the Water Code is amended to read:
9 8550. (a) The board is continued in existence and shall
10 continue to exercise and have all of its powers, duties, purposes,
11 responsibilities, and jurisdiction.

12 (b) Notwithstanding any other provision of law, the board is a
13 state agency that is separate from, and shall function
14 independently of, the department.

15 ~~SEC. 3.~~

16 SEC. 5. Section 8551 of the Water Code is amended to read:
17 8551. (a) Except as provided in subdivision (g), the board
18 consists of nine members who shall be appointed in accordance
19 with this section.

20 (b) (1) Seven members of the board shall be appointed by and
21 serve at the pleasure of the Governor, subject to Senate
22 confirmation.

23 (2) Of the members appointed pursuant to paragraph (1), the
24 following requirements apply:

- 25 (A) One person shall be an engineer.
- 26 (B) One person shall be a hydrogeologist.
- 27 (C) One person shall be a flood control expert with not less
28 than five years experience.
- 29 (D) One person shall be an attorney with water experience.
- 30 (E) Three persons shall be public members.

31 (c) One member of the board shall be appointed by the Senate
32 Rules Committee.

33 (d) One member of the board shall be appointed by the
34 Speaker of the Assembly.

35 (e) The member appointed pursuant to subdivision (c) or (d)
36 shall be a public member.

37 (f) (1) Except as provided in paragraph (2), the board
38 members appointed pursuant to subdivision (b), (c), or (d) shall
39 serve four-year terms.

1 (2) The board members initially appointed pursuant to this
2 section shall determine, by lot, that five members shall serve
3 four-year terms and four members shall serve two-year terms.

4 (g) Each board member holding office on December 31, 2006,
5 shall continue to serve until his or her successor is appointed and
6 has been qualified to hold office. *The order of replacement shall*
7 *be determined by lot.*

8 ~~SEC. 4.~~

9 *SEC. 6.* Section 8552 of the Water Code is amended to read:

10 8552. (a) Each member of the board shall receive the
11 necessary expenses incurred by the member in the performance
12 of official duties.

13 (b) Any member of the board traveling outside the state
14 pursuant to authorization of the board, and the approval of the
15 Governor and Director of Finance as provided by Section 11032
16 of the Government Code, while so engaged shall receive per
17 diem and his or her necessary expenses.

18 (c) Each member of the board shall receive the salary provided
19 for in Section 11564 of the Government Code.

20 ~~SEC. 5.~~

21 *SEC. 7.* Section 8554 of the Water Code is amended to read:

22 8554. The Governor shall select one of the members of the
23 board as president.

24 ~~SEC. 6.~~

25 *SEC. 8.* Section 8577 is added to the Water Code, to read:

26 8577. (a) No member of the board shall participate in any
27 board action or attempt to influence any decision or
28 recommendation by any employee of or consultant to the board
29 that involves himself or herself or that involves any entity with
30 which the member is connected as a director, officer, consultant,
31 or full- or part-time employee, or in which the member has a
32 direct personal financial interest within the meaning of Section
33 87100 of the Government Code.

34 (b) No board member shall participate in any proceeding
35 before any agency as a consultant or in any other capacity on
36 behalf any person of that actively participates in matters before
37 the board.

38 (c) For a period of 12 months after leaving office, a former
39 board member shall not act as agent or attorney for, or otherwise
40 represent, any other person before the board by making any

1 formal or informal appearance or by making any oral or written
2 communication to the board.

3 (~~Added by Stats. 1989, Ch. 1095, Sec. 22.~~)

4 *SEC. 9. Section 8575 of the Water Code is amended to read:*

5 8575. A member of the board having an interest in lands
6 within the drainage district ~~is not disqualified~~ *shall recuse*
7 *himself or herself* from voting to execute ~~any part those parts~~ of
8 the plans of flood control ~~or from carrying out the objects of this~~
9 ~~part that would affect those lands.~~

10 ~~SEC. 7.~~

11 *SEC. 10.* Section 8578 is added to the Water Code, to read:

12 8578. (a) For the purposes of this section, “ex parte
13 communication” means any oral or written communication
14 concerning matters, other than purely procedural matters, under
15 the board’s jurisdiction that are subject to a vote.

16 (b) (1) No board member or any person, excluding a staff
17 member of the board acting in his or her official capacity, who
18 intends to influence the decision of a board member on a matter
19 before the board, shall conduct an ex parte communication.

20 (2) If an ex parte communication occurs, the board member
21 shall notify the interested party that a full disclosure of the ex
22 parte communication shall be entered in the board’s record.

23 (3) Communications cease to be ex parte communications
24 when either of the following occurs:

25 (A) The board member or the person who engaged in the
26 communication with the board member fully discloses the
27 communication and requests in writing that it be placed in the
28 board’s official record of the proceeding.

29 (B) When two or more board members receive substantially
30 the same written communication, or are party to the same oral
31 communication, from the same party on the same matter, and a
32 single board member fully discloses the communication on
33 behalf of the other board member or members who received the
34 communication and requests in writing that it be placed in the
35 board’s official record of the proceeding.

36 (c) Notwithstanding Section 11425.10 of the Government
37 Code, the ex parte communications provisions of the
38 Administrative Procedure Act (Article 7 (commencing with
39 Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title

1 2 of the Government Code) do not apply to proceedings of the
2 board to which this section applies.

3 ~~(Amended by Stats. 1995, Ch. 938, Sec. 84. Effective January~~
4 ~~1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938.)~~

5 ~~SEC. 8:~~

6 *SEC. 11.* Article 2 (commencing with Section 8580) of
7 Chapter 2 of Part 4 of Division 5 of the Water Code is repealed.

8 ~~SEC. 9:~~

9 *SEC. 12.* Article 2 (commencing with Section 8580) is added
10 to Chapter 2 of Part 4 of Division 5 of the Water Code, to read:

11

Article 2. Employees

12

13
14 8580. (a) The board may appoint an executive officer.

15 (b) The board may employ legal counsel and other necessary
16 staff.

17 ~~SEC. 10:~~

18 *SEC. 13.* Section 8614.5 is added to the Water Code, to read:

19 8614.5. (a) On or before January 1, ~~2008~~ 2009, the board
20 shall prepare and adopt a strategic flood control plan ~~that~~
21 ~~includes identifying the areas of greatest threat to flooding~~
22 *pursuant to Section 8614.6.* The board shall make relevant maps
23 available to the public and shall post these maps on its Internet
24 Web site.

25 (b) The board shall establish and update, at a minimum, every
26 five years, standards for levee construction, operation, and
27 maintenance.

28 (c) The board shall review local and regional land use plans to
29 ensure their compliance with flood protection and public safety
30 standards adopted by the board.

31 (d) The board shall review flood control plans adopted by
32 local public agencies to ensure that those plans adequately
33 protect public safety. The board shall revise those plans to ensure
34 adequate flood protection if the board determines that the plans
35 are insufficient for flood protection purposes.

36 (e) The board shall not allocate any funds to a local public
37 agency for a flood control project unless the board determines
38 that project ensures adequate flood protection.

39 *SEC. 14.* Section 8614.6 is added to the Water Code, to read:

1 8614.6. (a) *By December 31, 2008, the board shall prepare*
2 *a report to the Governor and Legislature on the status of the*
3 *state flood control system. For the purposes of preparing the*
4 *report, the board shall inspect the project levees and review*
5 *available information on all of the following:*

6 (1) *A description and the location of all facilities of the State*
7 *Plan of Flood Control, including, but not limited to, levees,*
8 *canals, weirs, bypasses, and pumps.*

9 (2) *An evaluation of the performance and deficiencies of*
10 *project levees and other facilities of the State Plan of Flood*
11 *Control.*

12 (3) *A prioritized list of actions necessary to improve the*
13 *performance of, and to the maximum extent practicable, to*
14 *eliminate deficiencies of, project levees and other facilities of the*
15 *State Plan of Flood Control, using the following criteria for*
16 *establishing its priority list:*

17 (A) *The likelihood of failure by the levee or facility.*

18 (B) *The current population protected by the levee or facility.*

19 (C) *The public safety infrastructure protected by the levee or*
20 *facility. For purposes of this subparagraph, “public safety*
21 *infrastructure” means the street and highway evacuation routes,*
22 *hospitals, and other public safety infrastructure necessary to*
23 *respond to a flood emergency.*

24 (4) *The board shall consider both structural and nonstructural*
25 *methods for improving the performance and eliminating*
26 *deficiencies of project levees and other facilities of the State Plan*
27 *of Flood Control and wherever feasible, the board shall include*
28 *actions intended to meet multiple objectives, including each of*
29 *the following:*

30 (A) *Reducing the risk to human life, health, and safety from*
31 *flooding.*

32 (B) *Promoting natural dynamic hydrologic and geomorphic*
33 *processes.*

34 (C) *Reducing damages from flooding.*

35 (D) *Increasing and improving the quantity, diversity, and*
36 *connectivity of riparian, wetland, floodplain, and shaded riverine*
37 *aquatic habitats, including agriculture and the ecological values*
38 *of these lands.*

39 (E) *Minimizing the flood management system operation and*
40 *maintenance requirements.*

1 (F) Promoting the recovery and stability of native species
2 populations and overall biotic community diversity.

3 (b) The department shall assist the board in developing the
4 necessary information for the report.

5 (c) (1) The board shall conduct at least two public meetings to
6 consider public comments prior to finalizing the report. At least
7 one meeting shall be conducted at a location in the Sacramento
8 Valley and at least one meeting shall be conducted at a location
9 in the San Joaquin Valley or the Sacramento-San Joaquin Delta
10 as described in Section 12220.

11 (2) The board shall publish the draft report on its Internet
12 Web site at least 30 days before the public meetings.

13 (3) To the extent feasible, the board shall provide outreach to
14 disadvantaged communities to promote access and participation
15 in the meetings.

16 (d) By December 31, 2007, the board shall provide a report to
17 the Governor and Legislature on its progress toward meeting the
18 requirements of subdivision (a).

19 (e) It is the intent of the Legislature that the report to the
20 Governor and Legislature on the status of the state flood control
21 system become the basis for developing and implementing one or
22 more Natural Communities Conservation Plans or joint Natural
23 Communities Conservation Plan/Habitat Conservation Plans for
24 flood management projects.

25 SEC. 15. Section 12878 of the Water Code is amended to
26 read:

27 12878. Unless the context otherwise requires, the following
28 definitions apply throughout this chapter:

29 (a) "Department" means Department of Water Resources.

30 (b) "Director" means the Director of Water Resources.

31 (c) "Board" means the ~~State Reclamation~~ Central Valley
32 Flood Protection Board.

33 (d) Wherever the words "board or department" or "board or
34 director" are used together in this chapter they shall mean board
35 as to any project in the Sacramento or San Joaquin Valleys or on
36 or near the Sacramento River or the San Joaquin River or any of
37 their tributaries, and department or director as to any project in
38 any other part of the state outside of the jurisdiction of the board.

39 (e) "Project" means any project that has been authorized
40 pursuant to Chapter 2 (commencing with Section 12639) or

1 Chapter 4 (commencing with Section 12850) and concerning
2 which assurances have been given to the Secretary of the Army
3 or the Secretary of Agriculture that the state or a political
4 subdivision thereof will operate and maintain the project works
5 in accordance with regulations prescribed by the federal
6 government or any project upon which assurances have been
7 given to the Secretary of the Army and upon which the Corps of
8 Engineers, United States Army, has performed work pursuant to
9 Section 208 of Public Law 780, 83rd Congress, 2nd Session,
10 approved September 3, 1954.

11 (f) “Maintenance” means work described as maintenance by
12 the federal regulations issued by the Secretary of the Army or the
13 Secretary of Agriculture for any project.

14 (g) “Maintenance area” means described or delineated lands
15 that are found by the board or department to be benefitted by the
16 maintenance and operation of a particular unit of a project.

17 (h) “Unit” means any portion of the works of a project
18 designated as a unit by the board or department, other than the
19 works prescribed in Section 8361, or works operated and
20 maintained by the United States.

21 (i) “Land” includes improvements.

22 (j) “Local agency” means and includes all districts or other
23 public agencies responsible for the operation of works of any
24 project under Section 8370, Chapter 2 (commencing with Section
25 12639) or Chapter 4 (commencing with Section 12850) or any
26 other law of this state.

27 (k) “Cost of operation and maintenance” means, for the
28 purposes of maintenance areas established after July 31, 2004, as
29 the result of relinquishment by a local agency pursuant to Section
30 12878.1 only, the cost of all maintenance, as defined in
31 subdivision (f), and shall also include, but is not limited to, all of
32 the following costs:

33 (1) All costs incurred by the department or the board in the
34 formation of the maintenance area under this chapter.

35 (2) Any costs, if deemed appropriate by the department, to
36 secure insurance covering liability to others for damages arising
37 from the maintenance activities of the department or from
38 flooding in the maintenance area.

39 (3) Any costs of defending any action brought against the
40 state, the department, or the board, or any employees of these

1 entities, for damages arising from the maintenance activities of
2 the department or from flooding in the maintenance area.

3 (4) Any costs incurred in the payment of any judgment or
4 settlement of an action against the state, the department, or the
5 board, or any employees of these entities, for damages arising
6 from the formation of the maintenance area or from any
7 maintenance activities of the department or flooding in the
8 maintenance area.

9 *SEC. 16. Section 12878.1 of the Water Code is amended to*
10 *read:*

11 12878.1. (a) Whenever the *board or* department finds that a
12 unit of a project is not being operated or maintained in
13 accordance with the standards established by federal regulations
14 or whenever the governing body of a local agency obligated to
15 operate and maintain that unit by resolution duly adopted and
16 filed with the department declares that it no longer desires to
17 operate and maintain the unit, the department shall prepare a
18 statement to that effect specifying in detail the particular items of
19 work necessary to be done in order to comply with the standards
20 of the federal government together with an estimate of the cost
21 thereof for the current fiscal year and for the ensuing fiscal year.

22 (b) Subject to subdivision (c), but notwithstanding any other
23 provision of law, the board or the department is not required to
24 proceed in accordance with subdivision (a) or with the formation
25 of a maintenance area under this chapter if neither the board nor
26 the department has given the nonfederal assurances to the United
27 States required for the project. If neither the board nor the
28 department has given the nonfederal assurances to the United
29 States required for the project, the board or department may elect
30 to proceed with the formation if it determines that the formation
31 of a maintenance area is in the best interest of the state.

32 (c) (1) Subdivision (b) does not apply to any project for which
33 an application for the formation of a maintenance area under this
34 chapter has been submitted to the department by a local agency
35 on or before July 1, 2003.

36 (2) Subject to paragraph (3), the department or the board shall
37 proceed in accordance with subdivision (a) and with the
38 formation of a maintenance area in accordance with this chapter
39 for any project described in paragraph (1).

1 (3) Before the department or the board forms a maintenance
2 area pursuant to this subdivision, the local agency shall enter into
3 an agreement with the department pursuant to which the local
4 agency agrees to indemnify and hold and save harmless the state,
5 its officers, agents, and employees for any and all liability for
6 damages that may arise out of the planning, design, construction,
7 operation, maintenance, repair, or rehabilitation of the project, or
8 the dissolution or modification of the maintenance area formed
9 pursuant to this subdivision.

10 ~~SEC. 11.~~

11 *SEC. 17.* If the Commission on State Mandates determines
12 that this act contains costs mandated by the state, reimbursement
13 to local agencies and school districts for those costs shall be
14 made pursuant to Part 7 (commencing with Section 17500) of
15 Division 4 of Title 2 of the Government Code.