

## Assembly Bill No. 5

### CHAPTER 366

An act to amend Section 11564 of, and to repeal Section 13332.11.1 of, the Government Code, to repeal Section 5096.830 of the Public Resources Code, and to amend Sections 8521, 8550, 8551, 8552, 8554, 8575, 8590, 12878, 12878.1, 12878.21, and 12878.23 of, to amend the heading of Part 4 (commencing with Section 8520) of Division 5 of, to add Sections 8306, 8522.3, 8522.5, 8523, 8577, 8578, 8610.5, 8612, 8613, 9625, and 12585.12 to, to add Chapter 9 (commencing with Section 9110) to Part 4 of Division 5 of, to add Part 8 (commencing with Section 9650) to Division 5 of, to repeal Article 8 (commencing with Section 8725) of Chapter 3 of Part 4 of Division 5 of, and to repeal and add Article 2 (commencing with Section 8580) Chapter 2 of Part 4 of Division 5 of, the Water Code, relating to flood management, and making an appropriation therefor.

[Approved by Governor October 10, 2007. Filed with  
Secretary of State October 10, 2007.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 5, Wolk. Flood management.

(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 require the board to act independently of the department. The bill would state the intent of the Legislature to transfer the duties and corresponding funding allocated to the Reclamation Board as it exists on December 31, 2007, together with all necessary positions, to the board as it is reconstituted on and after January 1, 2008. The bill would prohibit the department from overturning any action or decision by the board. The bill would increase the membership of the board from 7 to 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 the Chair of the Senate Committee on Natural Resources and Water and one

board member to be the Chair of the Assembly Committee on Water, Parks and Wildlife, and would designate those 2 members as nonvoting ex officio 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 and would incorporate additional changes made by AB 933, which has been chaptered. The bill would require the Governor to select one of the board members as president. 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 chief engineer 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 objectives of the board.

This bill would instead require that a member of the board comply with specified conflict of interest requirements when voting to carry out any part of a plan of flood control and when carrying out the objectives of certain provisions of law relating to the board. The bill would subject the board members to specified requirements relating to conflict of interest and ex parte communications.

(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 prohibit a board member from advocating to a federal agency on behalf of a project that has been or is reasonably anticipated to be submitted to the board for review unless the board authorizes that action in accordance with specified requirements. The bill would require the board to adopt regulations relating to evidentiary hearings and to hold evidentiary hearings to determine any matter that requires the issuance of a permit. The bill would require the board to take action only after allowing public comment and to consider, as applicable, specified matters for the purpose of taking that action in any evidentiary hearing. The bill would authorize the board to collaborate with state and federal agencies, if appropriate, regarding certain multiobjective flood management strategies.

(4) The Department of Water Resources performs various flood control activities throughout the state. Existing law also authorizes the Reclamation Board to engage in various flood control activities along the Sacramento River and San Joaquin River, their tributaries, and related areas. Existing law requires the board to establish and enforce standards for the maintenance and operation of, and to undertake other responsibilities with regard to, flood control works under its jurisdiction.

This bill would authorize the department to provide meals and other necessary support to any person engaged in emergency flood fight activities, as defined, on behalf of, or in cooperation with, the department. The bill would require the department, on or before December 31, 2008, to prepare, and the board to adopt, a schedule for mapping areas at risk of flooding in

the Sacramento River and San Joaquin River drainage. The bill would authorize the board or the department to establish a program of mitigation banking for the activities of the board or the department and for the benefit of local districts in the discharge of specified flood control responsibilities.

The bill would require the department to prepare, and the board to adopt, a flood control system status report, to be updated periodically, for the State Plan of Flood Control, as defined, and to undertake a related inspection of project levees, as defined. The bill would require the department, on or before September 1, 2010, and on or before September 1 of each year thereafter, to provide written notice to each landowner whose property is determined to be within a levee flood protection zone. The bill would require the department to prepare and maintain maps for levee flood protection zones. The bill would authorize the department to revise the maps to include updated information.

The bill would require, on or before September 30 of each year, a local agency responsible for the operation and maintenance of a project levee to prepare and submit to the department a specified report of information for inclusion in periodic flood management reports prepared by the department. By establishing these requirements on a local agency, the bill would impose a state-mandated local program. The bill would require the department, on or before December 31, 2008, to prepare and transmit to the board a report on project levees that are operated and maintained by each local agency using certain information. The bill would specify that a local agency responsible for the operation and maintenance of a project levee may propose to the board an upgrade of the project levee.

(5) Existing law authorizes, on a project-by-project basis, and in accordance with designated plans, state participation in federal flood control projects and specifies the degree of cooperation to be assumed by the state and local agencies in connection with those projects. Existing law, except as otherwise provided, requires the board to give assurances satisfactory to the Secretary of the Army that local cooperation as required by federal law will be furnished by the state in connection with described flood control projects.

This bill would authorize the department and the board to participate with the federal government or local agencies in the design of environmental enhancements associated with a federal flood control project, and to participate in the construction of environmental enhancements associated with a federal flood control project for which the state has authorized state participation.

(6) Existing law establishes procedures for the assumption of flood control maintenance and operation duties by the department in connection with the formation of a maintenance area on behalf of a federal flood control project unit if the department finds that a unit of a project is not being operate or maintained in accordance with standards established by federal regulations or the governing body of a local agency obligated to operate and maintain that unit by resolution declares that it no longer desires to operate and maintain the unit. Under existing law, the department and the board are not

required to form a maintenance area if neither agency has given the nonfederal assurances to the United States required for the project, except as otherwise provided for a project for which an application for the formation of the maintenance area has been submitted on or before July 1, 2003. Existing law prescribes requirements relating to the imposition of assessments on behalf of a maintenance area. Existing law requires the funds generated by the imposition of the assessments to be deposited in the Water Resources Revolving Fund and continuously appropriates those funds to pay the operation and maintenance costs of maintenance areas. Existing law provides for the dissolution of a maintenance area.

This bill would provide for the formation of a maintenance area if the department determines that a project unit is not being operated or maintained in accordance with federal regulations or the modification of a project unit that has been permitted by the board and that provides flood protection is not being operated or maintained in accordance with the requirements established by the board or the department, or if the local agency obligated to operate and maintain the project unit declares that it no longer desires to do so. The bill would provide that, if a maintenance area is formed for a portion of a project unit, any remaining portion of the project unit not included in the maintenance area remains the responsibility of the local agency obligated to operate and maintain that unit. The bill would authorize the board and the department to consolidate maintenance areas that share a common boundary.

The bill would delete the provisions relating to the formation of a maintenance area for a project for which an application for the formation of a maintenance area has been submitted on or before July 1, 2003. The bill would provide that the department is not required to perform certain work in connection with the formation of a maintenance area requested by a local agency until the local agency requesting the formation of the maintenance area pays to the department an amount of money that reflects certain costs incurred by the department.

The bill would change requirements relating to the imposition of assessments by revising the definition of the term “maintenance” to include work described as maintenance by the board or the department. By expanding the definition of that term to include additional work, the costs of which would be paid on behalf of maintenance areas from the continuous appropriation of funds from the Water Resources Revolving Fund, the bill would make an appropriation.

(7) Under existing law, the department expends or allocates funds on behalf of various flood control projects within the Sacramento-San Joaquin Delta and related areas.

This bill, commencing July 1, 2008, would subject the allocation or expenditure of funds by the state for the upgrade of a project levee, if that upgrade is authorized on or after July 1, 2008, that protects an urban area in which more than 1,000 people reside to a requirement that the local agency responsible for the operation and maintenance of the project levee and any city or county protected by the project levee enter into an agreement to adopt

a safety plan that includes specified components, within 2 years. If a city or county is responsible for the operation or maintenance of the project levee, the bill would require the governing body to approve a resolution committing to the preparation of a safety plan within 2 years. The bill would define the “upgrade of a project levee” to mean specified improvements, excluding any action undertaken on an emergency basis.

(8) 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.

(9) This bill would repeal certain provisions added by AB 156 if AB 156 and this bill are enacted and become operative and other conditions are met.

(10) This bill would repeal a provision added by SB 17 if SB 17 and this bill are enacted and become operative and other conditions are met.

Appropriation: yes.

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

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

(a) The central valley of this state is experiencing unprecedented development, resulting in the conversion of historically agricultural lands and communities to densely populated residential and urban centers.

(b) The Legislature recognizes that by their nature, levees, which are earthen embankments typically founded on fluvial deposits, cannot offer complete protection from flooding, but can decrease its frequency.

(c) The Legislature recognizes that the level of flood protection afforded rural and agricultural lands by the original flood control system is not considered adequate to protect those lands when developed for urban uses, and that a dichotomous system of flood protection for urban and rural lands has developed through many years of practice.

(d) The Legislature further recognizes that levees built to reclaim and protect agricultural land may be inadequate to protect urban development unless those levees are significantly improved.

(e) Local agencies are primarily responsible for making land use decisions in the state, and the Legislature intends that they retain that lead role.

(f) Local agencies rely upon federal flood plain information when approving developments, but the information available is often out of date and the flood risk may be greater than that indicated using available federal information.

(g) Flood plain management tools such as flood plain mapping, the National Flood Insurance Program, and the designated floodway program, represent important supplemental activities to educate the public about, and protect the public from, flood hazards.

(h) It is necessary for the state to immediately undertake the task of mapping flood plains and submitting up-to-date information to the federal government so that the federal National Flood Insurance Program maps reflect current and accurate conditions. In this way, the public can be provided with reliable information regarding flooding potential, and local agencies can make informed land use and flood management decisions so that the risk to life and property can be effectively reduced.

SEC. 2. Section 11564 of the Government Code is amended to read:

11564. (a) Effective January 1, 1988, an annual salary of twenty-five thousand one hundred eighteen dollars (\$25,118) shall be paid to each member of the State Air Resources Board and the Central Valley Flood Protection Board, if each member devotes a minimum of 60 hours per month to state board work. The salary shall be reduced proportionately if less than 60 hours per month is devoted to state board work.

(b) The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

(c) Notwithstanding subdivision (b), any salary increase is subject to Section 11565.5.

SEC. 3. Section 13332.11.1 of the Government Code, as added by Assembly Bill 156 of the 2007–08 Regular Session of the Legislature, is repealed.

SEC. 4. Section 5096.830 of the Public Resources Code, as added by Assembly Bill 156 of the 2007–08 Regular Session of the Legislature, is repealed.

SEC. 5. Section 8306 is added to the Water Code, to read:

8306. (a) Notwithstanding any other provision of law, the department may provide meals and other necessary support to any person, including, but not limited to, an employee of the department, who is engaged in emergency flood fight activities on behalf of, or in cooperation with, the department.

(b) For the purposes of this section, “emergency flood fight activities” mean actions taken under emergency conditions to maintain flood control features, the failure of which threaten to destroy life, property, or resources.

SEC. 6. The heading of Part 4 (commencing with Section 8520) of Division 5 of the Water Code is amended to read:

#### PART 4. THE CENTRAL VALLEY FLOOD PROTECTION BOARD

SEC. 7. Section 8521 of the Water Code is amended to read:

8521. “Board” means the Central Valley Flood Protection Board. Any reference to the Reclamation Board in this or any other code means the Central Valley Flood Protection Board.

SEC. 8. Section 8522.3 is added to the Water Code, to read:

8522.3. “Facilities of the State Plan of Flood Control” means the levees, weirs, channels, and other features of the State Plan of Flood Control.

SEC. 9. Section 8522.5 is added to the Water Code, to read:

8522.5. “Project levee” means any levee that is a part of the facilities of the State Plan of Flood Control.

SEC. 10. Section 8523 is added to the Water Code, to read:

8523. “State Plan of Flood Control” means the state and federal flood control works, lands, programs, plans, policies, conditions, and mode of maintenance and operations of the Sacramento River Flood Control Project described in Section 8350, 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 for which the board or the department has provided the assurances of nonfederal cooperation to the United States, and those facilities identified in Section 8361.

SEC. 11. Section 8550 of the Water Code is amended to read:

8550. (a) The board is continued in existence and shall continue to exercise and have all of its powers, duties, purposes, responsibilities, and jurisdiction.

(b) Notwithstanding any other provision of law, the board shall act independently of the department. The department shall not overturn any action or decision by the board.

(c) It is the intent of the Legislature to transfer the duties and corresponding funding allocated to the Reclamation Board as it exists on December 31, 2007, together with all necessary positions, to the board as it is reconstituted on and after January 1, 2008.

SEC. 12. Section 8551 of the Water Code is amended to read:

8551. (a) Except as provided in subdivision (g), the board consists of nine members who shall be appointed in accordance with this section.

(b) (1) Seven members of the board shall be appointed by the Governor, subject to Senate confirmation.

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

(A) One person shall be an engineer.

(B) One person shall have training, experience, and expertise in geology or hydrology.

(C) One person shall be a flood control expert with not less than five years’ experience.

(D) One person shall be an attorney with water experience.

(E) Three persons shall be public members.

(c) One member of the board shall be the Chair of the Senate Committee on Natural Resources and Water, to the extent that service with the board does not conflict with his or her legislative duties.

(d) One member of the board shall be the Chair of the Assembly Committee on Water, Parks and Wildlife, to the extent that service with the board does not conflict with his or her legislative duties.

(e) The members appointed pursuant to subdivisions (c) and (d) shall be nonvoting ex officio members.

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

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

(g) Each board member holding office on December 31, 2007, shall continue to serve until his or her successor is appointed and has been qualified to hold office. The order of replacement shall be determined by lot.

SEC. 13. Section 8552 of the Water Code is amended to read:

8552. Each member of the board appointed pursuant to subdivision (b) of Section 8551 shall receive compensation as follows:

(a) Each member shall receive the necessary expenses incurred by the member in the performance of official duties.

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

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

SEC. 14. Section 8554 of the Water Code is amended to read:

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

SEC. 15. Section 8575 of the Water Code is amended to read:

8575. A member of the board shall comply with the conflict of interest requirements of Section 87100 of the Government Code when voting to carry out any part of a plan of flood control and when carrying out the objects of this part.

SEC. 16. Section 8577 is added to the Water Code, to read:

8577. (a) A board member shall not participate in any board action or attempt to influence any decision or recommendation by any employee of, or consultant to, the board that involves himself or herself or that involves any entity with which the member is connected as a director, officer, consultant, or full- or part-time employee, or in which the member has a direct personal financial interest within the meaning of Section 87100 of the Government Code.

(b) A board member shall not participate in any proceeding before any agency as a consultant or in any other capacity on behalf of any person that actively participates in matters before the board.

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

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

(d) A board member shall not advocate to the United States Army Corps of Engineers or other federal agency on behalf of any project that has been or is reasonably anticipated to be submitted to the board for review, unless the board authorizes that action in accordance with Section 8560.

SEC. 17. Section 8578 is added to the Water Code, to read:

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

(b) (1) No board member nor any person or organization with an interest in board decisions, nor any person representing a person or organization with an interest in board decisions, excluding a staff member of the board acting in his or her official capacity, who intends to influence the decision of a board member on a matter before the board, shall conduct an ex parte communication.

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

(3) Communications cease to be ex parte communications when the board member or the person who engaged in the communication with the board member fully discloses the communication and requests in writing that it be placed in the board’s official record of the proceeding.

(c) Notwithstanding Section 11425.10 of the Government Code, the ex parte communications provisions of the Administrative Procedure Act (Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to proceedings of the board to which this section applies.

SEC. 18. Article 2 (commencing with Section 8580) of Chapter 2 of Part 4 of Division 5 of the Water Code is repealed.

SEC. 19. Article 2 (commencing with Section 8580) is added to Chapter 2 of Part 4 of Division 5 of the Water Code, to read:

Article 2. Employees

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

(b) The board may appoint a chief engineer.

(c) The board may employ legal counsel and other necessary staff.

SEC. 20. Section 8590 of the Water Code is amended to read:

8590. To carry out the primary state interest described in Section 8532, the board may do any of the following:

(a) Acquire either within or outside the boundaries of the drainage district, by purchase, condemnation or by other lawful means in the name of the drainage district, all lands, rights-of-way, easements, property or material necessary or requisite for the purpose of bypasses, weirs, cuts, canals, sumps,

levees, overflow channels and basins, reservoirs and other flood control works, and other necessary purposes, including drainage purposes.

(b) Construct, clear, and maintain bypasses, levees, canals, sumps, overflow channels and basins, reservoirs and other flood control works.

(c) Construct, maintain, and operate ditches, canals, pumping plants, and other drainage works.

(d) Make contracts in the name of the drainage district to indemnify or compensate any owner of land or other property for any injury or damage caused by the exercise of the powers conferred by this division, or arising out of the use, taking, or damage of any property for any of the purposes of this division.

(e) Collaborate with state and federal agencies, if appropriate, regarding multiobjective flood management strategies that incorporate agricultural conservation, ecosystem protection and restoration, or recreational components.

SEC. 21. Section 8610.5 is added to the Water Code, to read:

8610.5. (a) (1) The board shall adopt regulations relating to evidentiary hearings pursuant to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The board shall hold an evidentiary hearing for any matter that requires the issuance of a permit.

(3) The board is not required to hold an evidentiary hearing before making a decision relating to general flood protection policy or planning.

(b) The board may take an action pursuant to Section 8560 only after allowing for public comment.

(c) The board shall, in any evidentiary hearing, consider all of the following, as applicable, for the purpose of taking any action pursuant to Section 8560:

(1) Evidence that the board admits into its record from any party, state or local public agency, or nongovernmental organization with expertise in flood or flood plain management.

(2) The best available science that relates to the scientific issues presented by the executive officer, legal counsel, the department, or other parties that raise credible scientific issues.

(3) Effects of the proposed decision on the entire State Plan of Flood Control.

(4) Effects of reasonably projected future events, including but not limited to, changes in hydrology, climate, and development within the applicable watershed.

SEC. 22. Section 8612 is added to the Water Code, to read:

8612. (a) On or before December 31, 2008, the department shall prepare, and the board shall adopt, a schedule for mapping areas at risk of flooding in the Sacramento River and San Joaquin River drainage.

(b) The department shall update the schedule annually and shall present the updated schedule to the board for adoption on or before December 31 of each year. The update shall include the status of mapping in progress and

an estimated time of completion. The schedule shall be based on the present and expected future risk of flooding and associated consequences.

SEC. 23. Section 8613 is added to the Water Code, to read:

8613. (a) The board or the department may establish a program of mitigation banking for the activities of the board or the department under this part and for the benefit of local districts in the discharge of their flood control responsibilities under this part and 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).

(b) For the purposes of carrying out subdivision (a), the board or the department, in consultation with all appropriate state, local, and federal agencies with jurisdiction over environmental protection that are authorized to regulate and impose requirements upon the flood control work performed under this part or 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), may establish a system of mitigation banking by which mitigation credits may be acquired in advance for flood control work to be performed by the board, the department, or a local agency authorized to operate and maintain facilities of the State Plan of Flood Control.

SEC. 24. Article 8 (commencing with Section 8725) of Chapter 3 of Part 4 of Division 5 of the Water Code, as added by Senate Bill 17 of the 2007–08 Regular Session of the Legislature, is repealed.

SEC. 25. Chapter 9 (commencing with Section 9110) is added to Part 4 of Division 5 of the Water Code, to read:

CHAPTER 9. REPORTS

Article 1. Definitions

9110. Unless the context requires otherwise, the definitions set forth in this article govern the construction of this chapter.

(a) “Fiscal year” has the same meaning as that set forth in Section 13290 of the Government Code.

(b) “Levee flood protection zone” means the area, as determined by the board or the department, that is protected by a project levee.

(c) “Local agency” means a local agency responsible for the maintenance of a project levee.

(d) “Maintenance” has the same meaning as that set forth in subdivision (f) of Section 12878.

(e) “Project levee” means any levee that is part of the facilities of the State Plan of Flood Control.

(f) “State Plan of Flood Control” has the same meaning as that set forth in Section 5096.805 of the Public Resources Code.

## Article 2. State Reports

9120. (a) The department shall prepare and the board shall adopt a flood control system status report for the State Plan of Flood Control. This status report shall be updated periodically, as determined by the board. For the purposes of preparing the report, the department shall inspect the project levees and review available information to ascertain whether there are evident deficiencies.

(b) The status report shall include identification and description of each facility, an estimate of the risk of levee failure, a discussion of the inspection and review undertaken pursuant to subdivision (a), and appropriate recommendations regarding the levees and future work activities.

(c) On or before December 31, 2008, the board shall advise the Legislature, in writing, as to the board's schedule of implementation of this section.

9121. (a) On or before September 1, 2010, and on or before September 1 of each year thereafter, the department shall provide written notice to each landowner whose property is determined to be entirely or partially within a levee flood protection zone.

(b) The notice shall include statements regarding all of the following:

(1) The property is located behind a levee.

(2) Levees reduce, but do not eliminate, the risk of flooding and are subject to catastrophic failure.

(3) If available, the level of flood risk as described in the flood control system status report described in Section 9120 and a levee flood protection zone map prepared in accordance with Section 9130.

(4) The state recommends that property owners in a levee flood protection zone obtain flood insurance, such as insurance provided by the Federal Emergency Management Agency through the National Flood Insurance Program.

(5) Information about purchasing federal flood insurance.

(6) The Internet address of the Web site that contains the information required by the flood management report described in Section 9141.

(7) Any other information determined by the department to be relevant.

(c) A county, with assistance from the department, shall annually provide to the department, by electronic means, lists of names and addresses of property owners in a levee flood protection zone located in that county.

(d) Notwithstanding any other provision of the law, the department may enter into contracts with private companies to provide the notices required by this section.

9122. The board shall determine the areas benefited by facilities of the State Plan of Flood Control based on information developed by the department.

### Article 3. Levee Flood Protection Zone Maps

9130. (a) The department shall prepare and maintain maps for levee flood protection zones. The department shall prepare the maps by December 31, 2008, and shall include in the maps a designation of those lands where flood levels would be more than three feet deep if a project levee were to fail, using the best available information. The maps shall include other flood depth contours if that information is available.

(b) The department shall distribute the levee flood protection zone maps to appropriate governmental agencies, as determined by the department.

(c) The department shall make the maps readily available to the public. The department may charge a fee for the cost of reproducing the maps. To the extent feasible, maps shall be made available on the Internet Web site of the department.

(d) The department may periodically revise the maps to include updated information when that information becomes available.

### Article 4. Local Reports

9140. (a) On or before September 30 of each year, a local agency responsible for the operation and maintenance of a project levee shall prepare and submit to the department, in a format specified by the department, a report of information for inclusion in periodic flood management reports prepared by the department relating to the project levee. The information submitted to the department shall include all of the following:

(1) Information known to the local agency that is relevant to the condition or performance of the project levee.

(2) Information identifying known conditions that might impair or compromise the level of flood protection provided by the project levee.

(3) A summary of the maintenance performed by the local agency during the previous fiscal year.

(4) A statement of work and estimated cost for operation and maintenance of the project levee for the current fiscal year, as approved by the local agency.

(5) Any other readily available information contained in the records of the local agency relevant to the condition or performance of the project levee, as determined by the board or the department.

(b) A local agency described in subdivision (a) that operates and maintains a nonproject levee that also benefits land within the boundaries of the area benefited by the project levee shall include information pursuant to subdivision (a) with regard to the nonproject levee.

(c) A local agency that incurs costs for the maintenance or improvement of a project or nonproject levee under the delta levee maintenance subventions program established pursuant to Part 9 (commencing with Section 12980) of Division 6 may submit information submitted to satisfy the requirements of that program to meet the requirements of paragraph (3)

of subdivision (a), but may do so only for that reach of the levee included in that program.

(d) (1) A local agency responsible for the operation and maintenance of a levee not otherwise subject to this section may voluntarily prepare and submit to the department or the board a flood management report for posting on the Internet Web site of the department or the board.

(2) A flood management report submitted pursuant to paragraph (1) shall be made available on the Internet Web site of the board if the local agency is partially or wholly within the geographical boundaries of the board's jurisdiction. Otherwise, the report shall be made available on the Internet Web site of the department.

9141. (a) The department shall prepare and transmit to the board a report on the project levees operated and maintained by each local agency, using information provided by the local agency pursuant to Section 9140 and information from relevant portions of any of the following documents, as determined by the department:

(1) Annual inspection reports on local agency maintenance prepared by the department or the board.

(2) The State Plan of Flood Control.

(3) The flood control system status report described in Section 9120.

(4) The schedule for mapping described in Section 8612.

(5) Any correspondence, document, or information deemed relevant by the department.

(b) The department shall make the flood management report for each local agency available on the Internet Web site of the board and shall provide the report to all of the following entities:

(1) The local agency.

(2) Any city or county within the local agency's jurisdiction.

(3) Any public library located within the local agency's jurisdiction.

(c) The report shall be completed on or before December 31, 2008, and shall be updated annually.

9142. A local agency responsible for the operation and maintenance of a project levee may propose to the board an upgrade of the project levee if the local agency determines that the upgrade is appropriate. The local agency may implement that upgrade if approved by the board.

SEC. 26. Section 9625 is added to the Water Code, to read:

9625. (a) By January 1, 2010, the department shall develop cost-sharing formulas, as needed, for funds made available by the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the Public Resources Code) and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Division 43 (commencing with Section 75001) of the Public Resources Code) for repairs or improvements of facilities included in the plan to determine the local share of the cost of design and construction.

(b) For qualifying projects pursuant to subdivision (a), the state's share of the nonfederal share shall be set at a minimum level of 50 percent.

(c) In developing cost-share formulas, the department shall consider the ability of local governments to pay their share of the capital costs of the project.

(d) Prior to finalizing cost-share formulas, the department shall conduct public meetings to consider public comments. The department shall post the draft cost-share formula on its Internet Web site at least 30 days before the public meetings. To the extent feasible, the department shall provide outreach to disadvantaged communities to promote access and participation in the meetings.

SEC. 27. Part 8 (commencing with Section 9650) is added to Division 5 of the Water Code, to read:

#### PART 8. PROJECT LEVEE UPGRADES

9650. (a) (1) Commencing July 1, 2008, the allocation or expenditure of funds by the state for the upgrade of a project levee, if that upgrade is authorized on or after July 1, 2008, that protects an area in which more than 1,000 people reside shall be subject to a requirement that the local agency responsible for the operation and maintenance of the project levee and any city or county protected by the project levee, including a charter city or charter county, enter into an agreement to adopt a safety plan within two years. If a city or county is responsible for the operation and maintenance of the project levee, the governing body shall approve a resolution committing to the preparation of a safety plan within two years.

(2) The local entity responsible for the operation and maintenance of the project levee shall submit a copy of the safety plan to the department and the Reclamation Board.

(b) The safety plan, at a minimum, shall include all of the following elements:

(1) A flood preparedness plan that includes storage of materials that can be used to reinforce or protect a levee when a risk of failure exists.

(2) A levee patrol plan for high water situations.

(3) A flood-fight plan for the period before state or federal agencies assume control over the flood fight.

(4) An evacuation plan that includes a system for adequately warning the general public in the event of a levee failure, and a plan for the evacuation of every affected school, residential care facility for the elderly, and long-term health care facility.

(5) A floodwater removal plan.

(6) A requirement, to the extent reasonable, that either of the following applies to a new building in which the inhabitants are expected to be essential service providers:

(A) The building is located outside an area that may be flooded.

(B) The building is designed to be operable shortly after the floodwater is removed.

(c) The safety plan shall be integrated into any other local agency emergency plan and shall be coordinated with the state emergency plan.

(d) This section does not require the adoption of an element of the safety plan that was adopted previously and remains in effect.

9651. Unless the context requires otherwise, the definitions set forth in this section govern the construction of this part.

(a) “Emergency plan” and “state emergency plan” have the meanings set forth in subdivisions (a) and (b), respectively, of Section 8560 of the Government Code.

(b) “Essential service providers” includes, but is not limited to, hospitals, fire stations, police stations, and jails.

(c) “Long-term health care facility” has the same meaning as defined in Section 1418 of the Health and Safety Code.

(d) “Project levee” means any levee that is part of the facilities of the State Plan of Flood Control.

(e) “Residential care facility for the elderly” has the same meaning as defined in Section 1569.2 of the Health and Safety Code.

(f) “School” means a public or private preschool, elementary school, or secondary school or institution.

(g) “State Plan of Flood Control” means the state and federal flood control works, lands, programs, plans, policies, conditions, and mode of maintenance and operations of the Sacramento River Flood Control Project described in Section 8350, 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 for which the board or the department has provided the assurances of nonfederal cooperation to the United States, and those facilities identified in Section 8361.

(h) (1) “Upgrade of a project levee” means installing a levee underseepage control system, increasing the height or bulk of a levee, installing a slurry wall or sheet pile into the levee, rebuilding a levee because of internal geotechnical flaws, or adding a stability berm.

(2) Notwithstanding paragraph (1), an upgrade of a project levee does not include any action undertaken on an emergency basis.

SEC. 28. Section 12585.12 is added to the Water Code, to read:

12585.12. The department and the board may participate with the federal government or local agencies in the design of environmental enhancements associated with a federal flood control project, and may participate in the construction of environmental enhancements associated with a federal flood control project for which the state has authorized state participation.

SEC. 29. Section 12878 of the Water Code is amended to read:

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

(a) “Department” means Department of Water Resources.

(b) “Director” means the Director of Water Resources.

(c) “Board” means the State Reclamation Board.

(d) Wherever the words “board or department” or “board or director” are used together in this chapter they shall mean board as to any project in

the Sacramento or San Joaquin Valleys or on or near the Sacramento River or the San Joaquin River or any of their tributaries, and department or director as to any project in any other part of the state outside of the jurisdiction of the board.

(e) "Project" means any project that has been authorized pursuant to Chapter 2 (commencing with Section 12639) or Chapter 4 (commencing with Section 12850) and concerning which assurances have been given to the Secretary of the Army or the Secretary of Agriculture that the state or a political subdivision thereof will operate and maintain the project works in accordance with regulations prescribed by the federal government or any project upon which assurances have been given to the Secretary of the Army and upon which the Corps of Engineers, United States Army, has performed work pursuant to Section 208 of Public Law 780, 83rd Congress, 2nd Session, approved September 3, 1954.

(f) "Maintenance" means work described as maintenance by the federal regulations issued by the Secretary of the Army, the Secretary of Agriculture, the department, or the board for any project.

(g) "Maintenance area" means described or delineated lands that are found by the board or department to be benefited by the maintenance and operation of a particular unit of a project.

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

(i) "Land" includes improvements.

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

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

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

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

(3) Any costs of defending any action brought against the state, the department, or the board, or any employees of these entities, for damages arising from the maintenance activities of the department or from flooding in the maintenance area.

(4) Any costs incurred in the payment of any judgment or settlement of an action against the state, the department, or the board, or any employees of these entities, for damages arising from the formation of the maintenance

area or from any maintenance activities of the department or flooding in the maintenance area.

SEC. 30. Section 12878.1 of the Water Code is amended to read:

12878.1. (a) If the department determines that a unit of a project is not being operated or maintained in accordance with the standards established by federal regulations, if the department determines that the modification of a unit of a project that has been permitted by the board and that provides flood protection is not being operated or maintained in accordance with the requirements established by the board or the department, or if the governing body of a local agency obligated to operate and maintain that unit by resolution duly adopted and filed with the department declares that it no longer desires to operate and maintain the project unit, the department shall prepare a statement to that effect specifying in detail the particular items of work necessary to be done in order to comply with the standards of the federal government and the requirements of the board or the department together with an estimate of the cost thereof for the current fiscal year and for the immediately ensuing fiscal year.

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

(c) If a local agency requests the department to form a maintenance area by resolution duly adopted and filed with the department, the department shall estimate the cost of preparing the statement of necessary work and the cost thereof, and all other applicable costs incurred by the department before the formation of the maintenance area. The department shall submit that estimate to the local agency. The department is not required to perform any additional work to form that maintenance area until the local agency pays the department the amount estimated pursuant to this subdivision.

SEC. 31. Section 12878.21 of the Water Code is amended to read:

12878.21. Upon the formation of a maintenance area, the department shall thereafter operate and maintain the unit until such time as the maintenance area may be dissolved pursuant to this chapter. If the board or the department forms a maintenance area for a portion of a unit of a project, any remaining portion of the unit of a project not included in the maintenance area shall remain the responsibility of the local agency obligated to operate and maintain that unit.

SEC. 32. Section 12878.23 of the Water Code is amended to read:

12878.23. (a) The board or the department may modify the boundaries of any established maintenance area or zones within the maintenance area, the description of works to be maintained within the maintenance area, and the determination of relative benefits within any zone, upon its own initiative

or upon petition by the governing body of the local agency formerly responsible for the operation and maintenance of the unit or by the board of supervisors of the county in which all or a portion of the unit is located.

(b) The board or the department may consolidate maintenance areas that share a common boundary.

SEC. 33. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

SEC. 34. Section 3 of this bill shall only become operative if AB 156 and this bill are enacted and become operative, AB 156 adds Section 13332.11.1 to the Government Code, and this bill is enacted last.

SEC. 35. Section 4 of this bill shall only become operative if AB 156 and this bill are enacted and become operative, AB 156 adds Section 5096.830 to the Public Resources Code, and this bill is enacted last.

SEC. 36. Section 24 of this bill shall only become operative if SB 17 and this bill are enacted and become operative, SB 17 adds Article 8 (commencing with Section 8725) to Chapter 3 of Part 4 of Division 5 of the Water Code, and this bill is enacted last.