

Assembly Bill No. 70

CHAPTER 367

An act to add Section 8307 to the Water Code, relating to flood liability.

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

LEGISLATIVE COUNSEL'S DIGEST

AB 70, Jones. Flood liability.

Existing law, under various circumstances, subjects a public entity or an employee of a public entity to liability for property damage or personal injury caused by or from floods or floodwaters.

This bill would provide that a city or county may be required to contribute its fair and reasonable share of the property damage caused by a flood to the extent that it has increased the state's exposure to liability for property damage by unreasonably approving, as defined, new development in a previously undeveloped area, as defined, that is protected by a state flood control project, unless the city or county meets specified requirements.

The bill would become operative only if SB 5 is enacted and becomes effective on or before January 1, 2008.

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

SECTION 1. Section 8307 is added to the Water Code, to read:

8307. (a) A city or county may be required to contribute its fair and reasonable share of the property damage caused by a flood to the extent that the city or county has increased the state's exposure to liability for property damage by unreasonably approving new development in a previously undeveloped area that is protected by a state flood control project. However, a city or county shall not be required to contribute if, after the amendments required by Sections 65302.9 and 65860.1 of the Government Code have become effective, the city or county complies with Sections 65865.5, 65962, and 66474.5 of the Government Code as applicable with respect to that development. This section shall not be construed to extend or toll the statute of limitations for challenging the approval of any new development.

(b) A city or county is not required to contribute unless an action has been filed against the state asserting liability for property damage caused by a flood and the provisions of subdivision (a) providing for contribution have been satisfied. A city or county is not required to contribute if the state settles the claims against it without providing the city or county with an opportunity to participate in settlement negotiations.

(c) For the purposes of this section:

(1) “State flood control project” means any flood control works within 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.

(2) “Undeveloped area” means an area devoted to “agricultural use,” as defined in Section 51201 of the Government Code, or “open space land,” as defined in Section 65560 of the Government Code, that, as of January 1, 2008, is not already designated for development in a general or specific plan or by a local zoning ordinance.

(3) “Unreasonably approving” means approving a new development project without appropriately considering significant risks of flooding made known to the approving agency as of the time of approval and without taking reasonable and feasible action to mitigate the potential property damage to the new development resulting from a flood.

(4) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

(d) This section shall not apply to any land or projects for which an application for development has been submitted to the city or county prior to January 1, 2008.

SEC. 2. Section 1 of this act shall become operative only if Senate Bill 5 of the 2007–08 Regular Session of the Legislature is enacted and becomes effective on or before January 1, 2008.