

AMENDED IN ASSEMBLY APRIL 16, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 156

Introduced by Assembly Member Laird

January 18, 2007

An act to amend Sections 12878.1, 12878.21, and 12878.23 of, to add Sections 8306, 8612, 8613, and 12585.12 to, and to add Chapter 9 (commencing with Section 9110) to Part 4 of, and to add Part 8 (commencing with Section 9650) to, Division 5 of, the Water Code, relating to flood control.

LEGISLATIVE COUNSEL'S DIGEST

AB 156, as amended, Laird. Flood control.

(1) 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, update, and maintain maps for levee flood protection zones.

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.

(2) 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.

(3) 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. 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 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 authorize the board or the department to form a maintenance area for a project unit, or any portion of a project unit. 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 shall remain 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.

(4) 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 by a statute that becomes operative 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.

(5) 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 hereby finds and declares all of
- 2 the following:
- 3 (a) The central valley of this state is experiencing unprecedented
- 4 development, resulting in the conversion of historically agricultural
- 5 lands and communities to densely populated residential and urban
- 6 centers.
- 7 (b) The Legislature recognizes that by their nature, levees, which
- 8 are earthen embankments typically founded on fluvial deposits,
- 9 cannot offer complete protection from flooding, but can decrease
- 10 its frequency.
- 11 (c) The Legislature recognizes that the level of flood protection
- 12 afforded rural and agricultural lands by the original flood control
- 13 system is not considered adequate to protect those lands when
- 14 developed for urban uses, and that a dichotomous system of flood
- 15 protection for urban and rural lands has developed through many
- 16 years of practice.
- 17 (d) The Legislature further recognizes that levees built to reclaim
- 18 and protect agricultural land may be inadequate to protect urban
- 19 development unless those levees are significantly improved.
- 20 (e) Local agencies are primarily responsible for making land
- 21 use decisions in the state, and the Legislature intends that they
- 22 retain that lead role.

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

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

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

18 SEC. 2. Section 8306 is added to the Water Code, to read:

19 8306. (a) Notwithstanding any other provision of law, the
20 department may provide meals and other necessary support to any
21 person, including, but not limited to, an employee of the
22 department, who is engaged in emergency flood fight activities on
23 behalf of, or in cooperation with, the department.

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

28 SEC. 3. Section 8612 is added to the Water Code, to read:

29 8612. (a) On or before December 31, 2008, the department
30 shall prepare, and the board shall adopt, a schedule for mapping
31 areas at risk of flooding in the Sacramento River and San Joaquin
32 River drainage.

33 (b) The department shall update the schedule annually and shall
34 present the updated schedule to the board for adoption on or before
35 December 31 of each year. The update shall include the status of
36 mapping in progress and an estimated time of completion. The
37 schedule shall be based on the present and expected future risk of
38 flooding and associated consequences.

39 SEC. 4. Section 8613 is added to the Water Code, to read:

1 8613. (a) The board or the department may establish a program
2 of mitigation banking for the activities of the board or the
3 department under this part and for the benefit of local districts in
4 the discharge of their flood control responsibilities under this part
5 and the State Water Resources Law of 1945 (Chapter 1
6 (commencing with Section 12570) and Chapter 2 (commencing
7 with Section 12639) of Part 6 of Division 6).

8 (b) For the purposes of carrying out subdivision (a), the board
9 or the department, in consultation with all appropriate state, local,
10 and federal agencies with jurisdiction over environmental
11 protection that are authorized to regulate and impose requirements
12 upon the flood control work performed under this part or the State
13 Water Resources Law of 1945 (Chapter 1 (commencing with
14 Section 12570) and Chapter 2 (commencing with Section 12639)
15 of Part 6 of Division 6), may establish a system of mitigation
16 banking by which mitigation credits may be acquired in advance
17 for flood control work to be performed by the board, the
18 department, or a local agency authorized to operate and maintain
19 facilities of the State Plan of Flood Control.

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

22
23 CHAPTER 9. REPORTS

24
25 Article 1. Definitions

26
27 9110. Unless the context requires otherwise, the definitions
28 set forth in this article govern the construction of this chapter.

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

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

33 (c) "Local agency" means a local agency responsible for the
34 maintenance of a project levee.

35 (d) "Maintenance" has the same meaning as that set forth in
36 subdivision (f) of Section 12878.

37 (e) "Project levee" means any levee that is part of the facilities
38 of the State Plan of Food Control.

39 (f) "State Plan of Flood Control" means the state and federal
40 flood control works, lands, programs, plans, policies, conditions,

1 and mode of maintenance and operations of the Sacramento River
 2 Flood Control Project described in Section 8350, and of flood
 3 control projects in the Sacramento River and San Joaquin River
 4 watersheds authorized pursuant to Article 2 (commencing with
 5 Section 12648) of Chapter 2 of Part 6 of Division 6 for which the
 6 board or the department has provided the assurances of nonfederal
 7 cooperation to the United States, and those facilities identified in
 8 Section 8361.

9
 10 Article 2. State Reports

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 12 9120. (a) The department shall prepare and the board shall
 13 adopt a flood control system status report for the State Plan of
 14 Flood Control. This status report shall be updated periodically, as
 15 determined by the board. For the purposes of preparing the report,
 16 the department shall inspect the project levees and review available
 17 information to ascertain whether there are evident deficiencies.

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

23 ~~(c) The status report shall identify deficiencies in the State Plan~~
 24 ~~of Flood Control and shall include recommendations for resolving~~
 25 ~~those deficiencies.~~

26 ~~(d)~~

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

30 9121. (a) On or before September 1, 2010, and on or before
 31 September 1 of each year thereafter, the department shall provide
 32 written notice to each landowner whose property is determined to
 33 be entirely or partially within a levee flood protection zone.

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

- 36 (1) The property is located behind a levee.
- 37 (2) Levees reduce, but do not eliminate, the risk of flooding and
- 38 are subject to catastrophic failure.
- 39 (3) If available, the level of flood risk as described in the flood
- 40 control system status report described in Section 9120 and a levee

1 flood protection zone map prepared in accordance with Section
2 9130.

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

7 (5) Information about purchasing federal flood insurance.

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

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

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

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

20 9122. The board shall determine the areas benefited by facilities
21 of the State Plan of Flood Control based on information developed
22 by the department.

23

24 Article 3. Levee Flood Protection Zone Maps

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26 9130. (a) The department shall prepare, update, and maintain
27 maps for levee flood protection zones. *The department shall*
28 *prepare the maps by December 31, 2008, and shall include in the*
29 *maps a designation of those lands where flood levels would be*
30 *more than three feet deep if a project levee were to fail.* The maps
31 shall include ~~flood depth contours determined by the department~~
32 ~~if that~~ *other flood depth contours if that* information is available.

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

36 (c) The department shall make the maps readily available to the
37 public. The department may charge a fee for the cost of reproducing
38 the maps.

Article 4. Local Reports

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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.

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

6 9141. (a) The department shall prepare and transmit to the
 7 board a report on the project levees operated and maintained by
 8 each local agency, using information provided by the local agency
 9 pursuant to Section 9140 and information from relevant portions
 10 of any of the following documents, as determined by the
 11 department:

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

14 (2) The State Plan of Flood Control.

15 (3) The flood control system status report described in Section
 16 9120.

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

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

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

23 (1) The local agency.

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

25 (3) Any public library located within the local agency’s
 26 jurisdiction.

27 (c) The report shall be completed on or before December 31,
 28 2008, and shall be updated annually.

29 9142. A local agency responsible for the operation and
 30 maintenance of a project levee may propose to the board an upgrade
 31 of the project levee if the local agency determines that the upgrade
 32 is appropriate. The local agency may implement that upgrade if
 33 approved by the board.

34 SEC. 6. Part 8 (commencing with Section 9650) is added to
 35 Division 5 of the Water Code, to read:

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37 **PART 8. PROJECT LEVEE UPGRADES**

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39 9650. (a) (1) Commencing July 1, 2008, the allocation or
 40 expenditure of funds by the state for the upgrade of a project levee,

1 if that upgrade is authorized by a statute that becomes operative
2 on or after July 1, 2008, that protects an area in which more than
3 1,000 people reside shall be subject to a requirement that the local
4 agency responsible for the operation and maintenance of the project
5 levee and any city or county protected by the project levee,
6 including a charter city or charter county, enter into an agreement
7 to adopt a safety plan within two years. If a city or county is
8 responsible for the operation and maintenance of the project levee,
9 the governing body shall approve a resolution committing to the
10 preparation of a safety plan within two years.

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

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

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

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

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

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

26 (5) A floodwater removal plan.

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

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

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

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

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

38 9651. Unless the context requires otherwise, the definitions
39 set forth in this section govern the construction of this part.

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

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

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

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

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

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

15 (g) “State Plan of Flood Control” means the state and federal
16 flood control works, lands, programs, plans, policies, conditions,
17 and mode of maintenance and operations of the Sacramento River
18 Flood Control Project described in Section 8350, and of flood
19 control projects in the Sacramento River and San Joaquin River
20 watersheds authorized pursuant to Article 2 (commencing with
21 Section 12648) of Chapter 2 of Part 6 of Division 6 for which the
22 board or the department has provided the assurances of nonfederal
23 cooperation to the United States, and those facilities identified in
24 Section 8361.

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

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

32 SEC. 7. Section 12585.12 is added to the Water Code, to read:
33 12585.12. The department and the board may participate with
34 the federal government or local agencies in the design of
35 environmental enhancements associated with a federal flood control
36 project, and may participate in the construction of environmental
37 enhancements associated with a federal flood control project for
38 which the state has authorized state participation.

39 SEC. 8. Section 12878.1 of the Water Code is amended to read:

1 12878.1. (a) If the board or the department finds that a unit of
2 a project, or any portion of a unit of a project, is not being operated
3 or maintained in accordance with the standards established by
4 federal regulations or whenever the governing body of a local
5 agency obligated to operate and maintain that unit by resolution
6 duly adopted and filed with the department declares that it no
7 longer desires to operate and maintain the unit, the department
8 shall prepare a statement to that effect specifying in detail the
9 particular items of work necessary to be done in order to comply
10 with the standards of the federal government together with an
11 estimate of the cost thereof for the current fiscal year and for the
12 ensuing fiscal year.

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

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

33 SEC. 9. Section 12878.21 of the Water Code is amended to
34 read:

35 12878.21. Upon the formation of a maintenance area, the
36 department shall thereafter operate and maintain the unit until such
37 time as the maintenance area may be dissolved pursuant to this
38 chapter. If the board or the department forms a maintenance area
39 for a portion of a unit of a project, any remaining portion of the
40 unit of a project not included in the maintenance area shall remain

1 the responsibility of the local agency obligated to operate and
2 maintain that unit.

3 SEC. 10. Section 12878.23 of the Water Code is amended to
4 read:

5 12878.23. (a) The board or the department may modify the
6 boundaries of any established maintenance area or zones within
7 the maintenance area, the description of works to be maintained
8 within the maintenance area, and the determination of relative
9 benefits within any zone, upon its own initiative or upon petition
10 by the governing body of the local agency formerly responsible
11 for the operation and maintenance of the unit or by the board of
12 supervisors of the county in which all or a portion of the unit is
13 located.

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

16 SEC. 11. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 a local agency or school district has the authority to levy service
19 charges, fees, or assessments sufficient to pay for the program or
20 level of service mandated by this act, within the meaning of Section
21 17556 of the Government Code.

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