

**Introduced by Senators Machado and Florez**  
(Principal coauthor: Assembly Member Wolk)  
**(Coauthor: Senator Steinberg)**  
(Coauthors: Assembly Members Jones and Laird)

February 20, 2008

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An act to amend Section 65007 of the Government Code, and to amend Sections 8201, 8501, 8502, 8551, 8559, 8560, and 8575 of, and to amend and repeal Sections 8522.3, 8522.5, 8523, 8577, and 8578 of, the Water Code, relating to flood protection.

LEGISLATIVE COUNSEL'S DIGEST

SB 1360, as introduced, Machado. Flood protection.

(1) Under existing law, the Department of Water Resources performs various flood management activities throughout the state, and the Central Valley Flood Protection Board engages in flood management activities along the Sacramento River and San Joaquin River, their tributaries, and related areas. Existing law establishes the Sacramento and San Joaquin Drainage District under the administration of the board for the purposes of carrying out specified flood management activities within the boundaries of the district. Existing law requires the board, in any evidentiary hearing, to consider various matters, including the effects of a proposed action on the State Plan of Flood Control, as defined.

This bill would, instead, require the department to prepare and the board to adopt a map that clearly delineates the boundaries of the Sacramento and San Joaquin Drainage District. The board would be required to make the map available to the public at no charge. The bill would revise the definition of the State Plan of Flood Control for these and other purposes.

(2) Existing law requires the board to consist of 9 members. Seven members, designated as voting members, are required to be appointed by the Governor and 2 members, designated as nonvoting members, are required to be chairpersons of specified legislative committees.

This bill would require the nonvoting members to be the chairpersons of those legislative committees or their designees.

(3) Existing law provides that a majority of the board constitutes a quorum and declares that no board action is effective unless the action is concurred in by a majority of the board members.

This bill, instead, would provide that a majority of the voting members of the board constitutes a quorum and would declare that no board action is effective unless a quorum is present and the action is concurred in by a majority of the voting members.

(4) Existing law subjects the members of the board to certain requirements, including requirements relating to conflict of interest and ex parte communications.

The bill would specify that those requirements only apply to the 7 members who are appointed by the Governor.

(5) The bill would make additional technical corrections.

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

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

1 SECTION 1. Section 65007 of the Government Code is  
2 amended to read:

3 65007. As used in this title, the following terms have the  
4 following meanings, unless the context requires otherwise:

5 (a) “Adequate progress” means all of the following:

6 (1) The total project scope, schedule, and cost of the completed  
7 flood protection system have been developed to meet the  
8 appropriate standard of protection.

9 (2) Revenues sufficient to fund each year of the project schedule  
10 developed in paragraph (1) have been identified and, in any given  
11 year and consistent with that schedule, at least 90 percent of the  
12 revenues scheduled to have been received by that year have been  
13 appropriated and are currently being expended.

14 (3) Critical features of the flood protection system are under  
15 construction, and each critical feature is progressing as indicated  
16 by the actual expenditure of the construction budget funds.

1 (4) The city or county has not been responsible for any  
2 significant delay in the completion of the system.

3 (5) The local flood management agency shall provide the  
4 Department of Water Resources and the Central Valley Flood  
5 Protection Board with the information specified in this subdivision  
6 sufficiently to determine substantial completion of the required  
7 flood protection. The local flood management agency shall  
8 annually report to the Central Valley Flood Protection Board on  
9 the efforts in working toward completion of the flood protection  
10 system.

11 (b) “Central Valley Flood Protection Plan” has the same  
12 meaning as that set forth in Section ~~9610~~ 9612 of the Water Code.

13 (c) “Developed area” has the same meaning as that set forth in  
14 Section 59.1 of Title 44 of the Code of Federal Regulations.

15 (d) “Flood hazard zone” means an area subject to flooding that  
16 is delineated as either a special hazard area or an area of moderate  
17 hazard on an official flood insurance rate map issued by the Federal  
18 Emergency Management Agency. The identification of flood  
19 hazard zones does not imply that areas outside the flood hazard  
20 zones, or uses permitted within flood hazard zones, will be free  
21 from flooding or flood damage.

22 (e) “Nonurbanized area” means a developed area or an area  
23 outside a developed area in which there are ~~less~~ *fewer* than 10,000  
24 residents.

25 (f) “Project levee” means any levee that is part of the facilities  
26 of the State Plan of Flood Control, ~~as defined in Section 5096.805~~  
27 ~~of the Public Resources Code.~~

28 (g) “Sacramento-San Joaquin Valley” means any lands in the  
29 bed or along or near the banks of the Sacramento River or San  
30 Joaquin River, or any of their tributaries or connected therewith,  
31 or upon any land adjacent thereto, or within any of the overflow  
32 basins thereof, or upon any land susceptible to overflow therefrom.  
33 The Sacramento-San Joaquin Valley does not include lands lying  
34 within the Tulare Lake basin, including the Kings River.

35 (h) “State Plan of Flood Control” has the same meaning as that  
36 set forth in subdivision (j) of Section 5096.805 of the Public  
37 Resources Code.

38 (i) “Urban area” means a developed area in which there are  
39 10,000 residents or more.

1 (j) “Urbanizing area” means a developed area or an area outside  
2 a developed area that is planned or anticipated to have 10,000  
3 residents or more within the next 10 years.

4 (k) “Urban level of flood protection” means the level of  
5 protection that is necessary to withstand flooding that has a  
6 1-in-200 chance of occurring in any given year using criteria  
7 consistent with, or developed by, the Department of Water  
8 Resources.

9 SEC. 2. Section 8201 of the Water Code is amended to read:

10 8201. (a) A local agency may prepare a local plan of flood  
11 protection in accordance with this chapter.

12 (b) A local plan of flood protection shall include all of the  
13 following:

14 (1) A strategy to meet the urban level of flood protection,  
15 including planning for residual flood risk and system resiliency.

16 (2) Identification of all types of flood hazards.

17 (3) Identification and risk assessment of the various facilities  
18 that provide flood protection for flood hazard areas, for current  
19 and future land uses.

20 (4) Identification of current and future flood corridors.

21 (5) Identification of needed improvements and costs of those  
22 improvements to the flood protection facilities that are necessary  
23 to meet flood protection standards.

24 (6) An emergency response and evacuation plan for flood-prone  
25 areas.

26 (7) A strategy to achieve multiple benefits, including flood  
27 protection, groundwater recharge, ecosystem health, and reduced  
28 maintenance costs over the long term.

29 (8) A long-term funding strategy for improvement and ongoing  
30 maintenance and operation of flood protection facilities.

31 (c) A local agency that is not a city or county that prepares a  
32 plan pursuant to this chapter ~~must~~ *shall* consult with the cities and  
33 counties that have jurisdiction over the planning area to ~~assure~~  
34 *ensure* that the local plan of flood protection is consistent with  
35 local general plans.

36 (d) Plans prepared pursuant to this chapter, within the  
37 Sacramento-San Joaquin Valley as defined by Section 9602, shall  
38 be consistent with the Central Valley Flood Protection Plan *adopted*  
39 pursuant to Section ~~9610~~ *9612*.

40 SEC. 3. Section 8501 of the Water Code is amended to read:

1 8501. (a) The boundaries of the district are set forth and  
2 described in Chapter 170, ~~Statutes and Amendments to the Codes,~~  
3 ~~California, of the Statutes of 1913,~~ and the description is hereby  
4 incorporated herein by reference as ~~there set out~~ *set forth in that*  
5 *chapter.*

6 (b) *The department shall prepare, and the Central Valley Flood*  
7 *Protection Board shall adopt, a map that clearly delineates the*  
8 *boundaries of the district. The board shall make the map available*  
9 *to the public at no charge.*

10 SEC. 4. Section 8502 of the Water Code is amended to read:

11 8502. The management and control of the district are vested  
12 in the ~~reclamation board~~ *Central Valley Flood Protection Board.*

13 SEC. 5. Section 8522.3 of the Water Code, as added by Section  
14 4 of Chapter 365 of the Statutes of 2007, is repealed.

15 ~~8522.3. “Facilities of the State Plan of Flood Control” means~~  
16 ~~the levees, weirs, channels, and other features of the State Plan of~~  
17 ~~Flood Control.~~

18 SEC. 6. Section 8522.3 of the Water Code, as added by Section  
19 8 of Chapter 366 of the Statutes of 2007, is amended to read:

20 8522.3. “Facilities of the State Plan of Flood Control” ~~means~~  
21 ~~the levees, weirs, channels, and other features of the State Plan of~~  
22 ~~Flood Control~~ *has the same meaning as that set forth in subdivision*  
23 *(e) of Section 5096.805 of the Public Resources Code.*

24 SEC. 7. Section 8522.5 of the Water Code, as added by Section  
25 5 of Chapter 365 of the Statutes of 2007, is repealed.

26 ~~8522.5. “Project levee” means any levee that is a part of the~~  
27 ~~facilities of the State Plan of Flood Control.~~

28 SEC. 8. Section 8522.5 of the Water Code, as added by Section  
29 9 of Chapter 366 of the Statutes of 2007, is amended to read:

30 8522.5. “Project levee” ~~means any levee that is a part of the~~  
31 ~~facilities of the State Plan of Flood Control~~ *has the same meaning*  
32 *as that set forth in subdivision (g) of Section 5096.805 of the Public*  
33 *Resources Code.*

34 SEC. 9. Section 8523 of the Water Code, as added by Section  
35 6 of Chapter 365 of the Statutes of 2007, is repealed.

36 ~~8523. “State Plan of Flood Control” means the state and federal~~  
37 ~~flood control works, lands, programs, plans, policies, conditions,~~  
38 ~~and mode of maintenance and operations of the Sacramento River~~  
39 ~~Flood Control Project described in Section 8350, and of flood~~  
40 ~~control projects in the Sacramento River and San Joaquin River~~

1 ~~watersheds authorized pursuant to Article 2 (commencing with~~  
 2 ~~Section 12648) of Chapter 2 of Part 6 of Division 6 for which the~~  
 3 ~~board or the department has provided the assurances of nonfederal~~  
 4 ~~cooperation to the United States, and those facilities identified in~~  
 5 ~~Section 8361.~~

6 SEC. 10. Section 8523 of the Water Code, as added by Section  
 7 10 of Chapter 366 of the Statutes of 2007, is amended to read:

8 8523. ~~“State Plan of Flood Control” means the state and federal~~  
 9 ~~flood control works, lands, programs, plans, policies, conditions,~~  
 10 ~~and mode of maintenance and operations of the Sacramento River~~  
 11 ~~Flood Control Project described in Section 8350, and of flood~~  
 12 ~~control projects in the Sacramento River and San Joaquin River~~  
 13 ~~watersheds authorized pursuant to Article 2 (commencing with~~  
 14 ~~Section 12648) of Chapter 2 of Part 6 of Division 6 for which the~~  
 15 ~~board or the department has provided the assurances of nonfederal~~  
 16 ~~cooperation to the United States, and those facilities identified in~~  
 17 ~~Section 8361~~ *has the same meaning as that set forth in subdivision*  
 18 *(j) of Section 5096.805 of the Public Resources Code.*

19 SEC. 11. Section 8551 of the Water Code is amended to read:

20 8551. (a) Except as provided in subdivision (g), the board  
 21 consists of nine members who shall be appointed in accordance  
 22 with this section.

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

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

- 27 (A) One person shall be an engineer.
- 28 (B) One person shall have training, experience, and expertise  
 29 in geology or hydrology.
- 30 (C) One person shall be a flood control expert with not less than  
 31 five years’ experience.
- 32 (D) One person shall be an attorney with water experience.
- 33 (E) Three persons shall be public members.

34 (c) One member of the board shall be the ~~Chair~~ *Chairperson* of  
 35 the Senate Committee on Natural Resources and Water, *or the*  
 36 *chairperson’s designee*, to the extent that service with the board  
 37 does not conflict with his or her legislative duties.

38 (d) One member of the board shall be the ~~Chair~~ *Chairperson*  
 39 of the Assembly Committee on Water, Parks and Wildlife, *or the*

1 *chairperson's designee*, to the extent that service with the board  
2 does not conflict with his or her legislative duties.

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

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

7 (2) The board members initially appointed pursuant to this  
8 section shall determine, by lot, that ~~five~~, *of the members appointed*  
9 *pursuant to subdivision (b)*, *four* members shall serve four-year  
10 terms and ~~four~~ *three* members shall serve two-year terms.

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

15 SEC. 12. Section 8559 of the Water Code is amended to read:  
16 8559. A majority of the *voting members of the* board constitutes  
17 a quorum.

18 SEC. 13. Section 8560 of the Water Code is amended to read:  
19 8560. No action of the board shall be effective unless ~~it a~~  
20 *quorum is present and the action* is concurred in by a majority of  
21 the *voting* members of the board.

22 SEC. 14. Section 8575 of the Water Code is amended to read:  
23 8575. A member of the board *appointed pursuant to subdivision*  
24 *(b) of Section 8551* shall comply with the conflict of interest  
25 requirements of Section 87100 of the Government Code when  
26 voting to carry out any part of a plan of flood control and when  
27 carrying out the objects of this part.

28 SEC. 15. Section 8577 of the Water Code, as added by Section  
29 12 of Chapter 365 of the Statutes of 2007, is repealed.

30 ~~8577. (a) A board member shall not participate in any board~~  
31 ~~action or attempt to influence any decision or recommendation by~~  
32 ~~any employee of, or consultant to, the board that involves himself~~  
33 ~~or herself or that involves any entity with which the member is~~  
34 ~~connected as a director, officer, consultant, or full- or part-time~~  
35 ~~employee, or in which the member has a direct personal financial~~  
36 ~~interest within the meaning of Section 87100 of the Government~~  
37 ~~Code.~~

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

1 ~~(e) For a period of 12 months after leaving office, a former~~  
2 ~~board member shall not act as agent or attorney for, or otherwise~~  
3 ~~represent, any other person before the board by making any formal~~  
4 ~~or informal appearance or by making any oral or written~~  
5 ~~communication to the board.~~

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

11 SEC. 16. Section 8577 of the Water Code, as added by Section  
12 16 of Chapter 366 of the Statutes of 2007, is amended to read:

13 8577. (a) A board member *appointed pursuant to subdivision*  
14 *(b) of Section 8551* shall not participate in any board action or  
15 attempt to influence any decision or recommendation by any  
16 employee of, or consultant to, the board that involves himself or  
17 herself or that involves any entity with which the member is  
18 connected as a director, officer, consultant, or full- or part-time  
19 employee, or in which the member has a direct personal financial  
20 interest within the meaning of Section 87100 of the Government  
21 Code.

22 (b) A board member *appointed pursuant to subdivision (b) of*  
23 *Section 8551* shall not participate in any proceeding before any  
24 agency as a consultant or in any other capacity on behalf of any  
25 person that actively participates in matters before the board.

26 (c) For a period of 12 months after leaving office, a former  
27 board member *appointed pursuant to subdivision (b) of Section*  
28 *8551* shall not act as agent or attorney for, or otherwise represent,  
29 any other person before the board by making any formal or  
30 informal appearance or by making any oral or written  
31 communication to the board.

32 (d) A board member *appointed pursuant to subdivision (b) of*  
33 *Section 8551* shall not advocate to the United States Army Corps  
34 of Engineers or other federal agency on behalf of any project that  
35 has been or is reasonably anticipated to be submitted to the board  
36 for review, unless the board authorizes that action in accordance  
37 with Section 8560.

38 SEC. 17. Section 8578 of the Water Code, as added by Section  
39 13 of Chapter 365 of the Statutes of 2007, is repealed.

1 ~~8578. (a) For the purposes of this section, “ex parte~~  
2 ~~communication” means any oral or written communication~~  
3 ~~concerning matters, other than purely procedural matters, under~~  
4 ~~the board’s jurisdiction that are subject to a vote.~~

5 ~~(b) (1) A board member or any person, excluding a staff~~  
6 ~~member of the board acting in his or her official capacity, who~~  
7 ~~intends to influence the decision of a board member on a matter~~  
8 ~~before the board, shall not conduct an ex parte communication.~~

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

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

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

23 SEC. 18. Section 8578 of the Water Code, as added by Section  
24 17 of Chapter 366 of the Statutes of 2007, is amended to read:

25 8578. (a) For the purposes of this section, “ex parte  
26 communication” means any oral or written communication  
27 concerning matters, other than purely procedural matters, under  
28 the board’s jurisdiction that are subject to a vote.

29 (b) (1) No board member *appointed pursuant to subdivision*  
30 *(b) of Section 8551* nor any person or organization with an interest  
31 in board decisions, nor any person representing a person or  
32 organization with an interest in board decisions, excluding a staff  
33 member of the board acting in his or her official capacity, who  
34 intends to influence the decision of a board member on a matter  
35 before the board, shall conduct an ex parte communication.

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

39 (3) Communications cease to be ex parte communications when  
40 the board member or the person who engaged in the communication

1 with the board member fully discloses the communication and  
2 requests in writing that it be placed in the board’s official record  
3 of the proceeding.

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

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