

AMENDED IN SENATE JANUARY 4, 2010

SENATE BILL

No. 808

Introduced by Senator Wolk

February 27, 2009

~~An act to add Chapter 4 (commencing with Section 12228) to Part 4.5 of Division 6 of the Water Code, relating to the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 12986 and 12987.5 of the Water Code, relating to water projects, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 808, as amended, Wolk. ~~San Francisco Bay/Sacramento-San Joaquin Delta Estuary: strategic work plan. Delta levee maintenance.~~

Existing law establishes a delta levee maintenance program pursuant to which a local agency may request reimbursement for costs incurred in connection with the maintenance or improvement of project or nonproject levees in the Sacramento-San Joaquin Delta. Existing law declares legislative intent to reimburse eligible local agencies under this program, until July 1, 2010, in an amount not to exceed 75% of those costs that are incurred in excess of \$1,000 per mile of levee, and on and after that date, in an amount not to exceed 50% of those described costs.

This bill, instead, would declare legislative intent to reimburse up to 75% of those described costs until July 1, 2016, and on and after that date, to reimburse up to 50% of those described costs.

Existing law, until July 1, 2010, authorizes the board to provide funds to an eligible local agency under this program in the form of an advance in an amount that does not exceed 75% of the estimated state share.

This bill would extend the operation of that authorization to July 1, 2016.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Under existing law, various state agencies administer programs relating to water supply, water quality, and flood management in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.~~

~~This bill would require the State Water Resources Control Board to implement its resolution entitled the Strategic Workplan for Actions to Protect Beneficial Uses of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary by commencing an investigation of the reasonableness of the methods of diversions from the Sacramento-San Joaquin Delta used by the State Water Project and the federal Central Valley Project, ensuring that the implementation is consistent with its duties to protect the public trust and prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, and taking other action. The state board would be required to prepare related quarterly reports, which the state board would be required to make available to the public and to post on the state board's Internet Web site.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$. 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 12986 of the Water Code, as amended by
2 Section 4 of Chapter 548 of the Statutes of 2006, is amended to
3 read:

4 12986. (a) It is the intention of the Legislature to reimburse
5 an eligible local agency pursuant to this part for costs incurred in
6 any year for the maintenance or improvement of project or
7 nonproject levees as follows:

8 (1) No costs incurred shall be reimbursed if the entire cost
9 incurred per mile of project or nonproject levee is one thousand
10 dollars (\$1,000) or less.

11 (2) Not more than 75 percent of any costs incurred in excess of
12 one thousand dollars (\$1,000) per mile of project or nonproject
13 levee shall be reimbursed.

1 (3) (A) As part of the project plans approved by the board, the
2 department shall require the local agency or an independent
3 financial consultant to provide information regarding the agency's
4 ability to pay for the cost of levee maintenance or improvement.
5 Based on that information, the department may require the local
6 agency or an independent financial consultant to prepare a
7 comprehensive study on the agency's ability to pay.

8 (B) The information or comprehensive study of the agency's
9 ability to pay shall be the basis for determining the maximum
10 allowable reimbursement eligible under this part. Nothing in this
11 paragraph shall be interpreted to increase the maximum
12 reimbursement allowed under paragraph (2).

13 (4) Reimbursements made to the local agency in excess of the
14 maximum allowable reimbursement shall be returned to the
15 department.

16 (5) The department may recover, retroactively, excess
17 reimbursements paid to the local agency from any time after
18 January 1, 1997, based on an updated study of the agency's ability
19 to pay.

20 (6) All final costs allocated or reimbursed under a plan shall be
21 approved by the reclamation board for project and nonproject levee
22 work.

23 (7) Costs incurred pursuant to this part that are eligible for
24 reimbursement include construction costs and associated
25 engineering services, financial or economic analyses,
26 environmental costs, mitigation costs, and habitat improvement
27 costs.

28 (b) Upon completion of its evaluation pursuant to Sections 139.2
29 and 139.4, by January 1, 2008, the department shall recommend
30 to the Legislature and the Governor priorities for funding under
31 this section.

32 (c) This section shall become inoperative on July 1, ~~2010~~ 2016,
33 and, as of January 1, ~~2011~~ 2017, is repealed, unless a later enacted
34 statute, that becomes operative on or before January 1, ~~2011~~ 2017,
35 deletes or extends the dates on which it becomes inoperative and
36 is repealed.

37 *SEC. 2. Section 12986 of the Water Code, as amended by*
38 *Section 5 of Chapter 548 of the Statutes of 2006, is amended to*
39 *read:*

1 12986. (a) It is the intention of the Legislature to reimburse
 2 from the General Fund an eligible local agency pursuant to this
 3 part for costs incurred in any year for the maintenance or
 4 improvement of project or nonproject levees as follows:

5 (1) No costs incurred shall be reimbursed if the entire cost
 6 incurred per mile of levee is one thousand dollars (\$1,000) or less.

7 (2) Fifty percent of any costs incurred in excess of one thousand
 8 dollars (\$1,000) per mile of levee shall be reimbursed.

9 (3) The maximum total reimbursement from the General Fund
 10 shall not exceed two million dollars (\$2,000,000) annually.

11 (b) This section shall become operative on July 1, ~~2010~~ 2016.

12 *SEC. 3. Section 12987.5 of the Water Code is amended to read:*

13 12987.5. (a) In an agreement entered into under Section 12987,
 14 the board may provide for an advance to the applicant in an amount
 15 not to exceed 75 percent of the estimated state share. The
 16 agreement shall provide that no advance shall be made until the
 17 applicant has incurred costs averaging one thousand dollars
 18 (\$1,000) per mile of levee.

19 (b) Advances made under subdivision (a) shall be subtracted
 20 from amounts to be reimbursed after the work has been performed.
 21 If the department finds that work has not been satisfactorily
 22 performed or where advances made actually exceed reimbursable
 23 costs, the local agency shall promptly remit to the state all amounts
 24 advanced in excess of reimbursable costs. If advances are sought,
 25 the board may require a bond to be posted to ensure the faithful
 26 performance of the work set forth in the agreement.

27 (c) This section shall become inoperative on July 1, ~~2010~~ 2016,
 28 and, as of January 1, ~~2011~~ 2017, is repealed, unless a later enacted
 29 statute, that becomes operative on or before January 1, ~~2011~~ 2017,
 30 deletes or extends the dates on which it becomes inoperative and
 31 is repealed.

32 *SEC. 4. This act is an urgency statute necessary for the*
 33 *immediate preservation of the public peace, health, or safety within*
 34 *the meaning of Article IV of the Constitution and shall go into*
 35 *immediate effect. The facts constituting the necessity are:*

36 *In order to facilitate the performance of necessary levee*
 37 *maintenance as soon as possible, it is necessary that this act take*
 38 *effect immediately.*

39 ~~SECTION 1. The Legislature finds and declares all of the~~
 40 ~~following:~~

1 ~~(a) Pursuant to its statutory authority, the State Water Resources~~
2 ~~Control Board has issued numerous orders and decisions regarding~~
3 ~~water quality and water right requirements affecting the~~
4 ~~Sacramento-San Joaquin Delta.~~

5 ~~(b) Under Section 275 of the Water Code, the state board is~~
6 ~~charged with the duty to take all appropriate proceedings before~~
7 ~~executive, legislative, or judicial agencies to prevent wast,~~
8 ~~unreasonable use, unreasonable method of use, or unreasonable~~
9 ~~method of diversion of water in this state.~~

10 ~~(c) The Legislature has found the water problems of the~~
11 ~~Sacramento-San Joaquin Delta to be unique within the state,~~
12 ~~recognizing the special role this estuary plays in the provision of~~
13 ~~water to serve numerous purposes, and the problem of salinity~~
14 ~~intrusion into the vast network of channels and sloughs of the~~
15 ~~Delta.~~

16 ~~(d) In Resolution No. 20008-0056, enacted on July 16, 2008,~~
17 ~~the state board adopted its Strategic Workplan for Actions to~~
18 ~~Protect Beneficial Uses of the San Francisco Bay/Sacramento-San~~
19 ~~Joaquin Delta Estuary (strategic workplan). The strategic workplan~~
20 ~~describes the actions that the state and the California regional water~~
21 ~~quality control boards will complete to protect beneficial uses of~~
22 ~~water in the Sacramento-San Joaquin Delta, and provides timelines~~
23 ~~and resource needs for implementing the actions.~~

24 ~~(e) In enacting the strategic workplan, the state board represented~~
25 ~~that it will consider later modifications as necessary to protect~~
26 ~~beneficial uses in the estuary. The strategic workplan also~~
27 ~~recognizes that the state board has a responsibility pursuant to the~~
28 ~~California Constitution and the Water Code to take action to~~
29 ~~prevent the waste, unreasonable use, unreasonable method of use,~~
30 ~~or unreasonable method of diversion of water in California.~~

31 ~~(f) The strategic workplan's timeline of activities anticipates~~
32 ~~the performance of its principal tasks between 2008 and 2013.~~

33 ~~(g) Among the concerns referenced in the strategic workplan is~~
34 ~~that the State Water Project's and federal Central Valley Project's~~
35 ~~methods of diversion in the southern Delta may not be secure and~~
36 ~~sustainable and may be having adverse impacts on fish and wildlife~~
37 ~~and other beneficial uses of water in the Delta.~~

38 ~~(h) Notwithstanding this concern, the strategic workplan does~~
39 ~~not require the state board to promptly investigate the~~
40 ~~reasonableness of the methods of diversion by the projects in~~

1 accordance with the California Constitution and Section 275 of
 2 the Water Code. Instead, the strategic workplan anticipates
 3 deferring action until the fourth quarter of 2010, and taking action
 4 only if a voluntary collaboration of state, federal, and local water
 5 agencies does not deliver a plan satisfactory to the board. The
 6 strategic workplan estimates that it would take the state board a
 7 minimum of two personnel years to conduct this investigation.

8 (i) Several factors make it necessary for the state board to
 9 promptly implement the strategic workplan within the identified
 10 timetable, and to commence appropriate investigations on or before
 11 July 1, 2009, and conclude the investigations within two years.

12 (j) The Sacramento-San Joaquin Delta Estuary remains in a
 13 state of precarious decline, threatening its beneficial use in the
 14 protection of fish and wildlife. As a consequence of recent litigation
 15 addressing endangered species requirements, the United States
 16 Fish and Wildlife Service has released a new biological opinion
 17 of Delta smelt in late 2008, and the National Marine Fisheries
 18 Service anticipates releasing a new biological opinion for salmon
 19 and steelhead in early 2009. Due to these decisions, substantial
 20 new reductions in project water deliveries from the Delta are likely
 21 to occur.

22 (k) As the Department of Water Resources has recognized in
 23 its own reports, climate change is likely to have significant and
 24 adverse effects on California's water supply projects and the
 25 Sacramento-San Joaquin Delta.

26 (l) The drought conditions presently facing California are
 27 creating further strains in the ability of the Sacramento-San Joaquin
 28 Delta to serve beneficial uses.

29 SEC. 2. Chapter 4 (commencing with Section 12228) is added
 30 to Part 4.5 of Division 6 of the Water Code, to read:

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 32
 33

CHAPTER 4. STRATEGIC WORKPLAN

34 12228. This part shall be known and may be cited as the
 35 Sacramento-San Joaquin Delta Protection Act of 2009.

36 12228.4. As part of its implementation of its Strategic
 37 Workplan for Actions to Protect Beneficial Uses of the San
 38 Francisco/Sacramento-San Joaquin Delta Estuary, the state board
 39 shall do all of the following:

1 ~~(a) Commence an investigation of the reasonableness of the~~
2 ~~methods of diversion from the Sacramento-San Joaquin Delta used~~
3 ~~by the State Water Project and the federal Central Valley Project,~~
4 ~~in accordance with its authority under Section 2 of Article X of~~
5 ~~the California Constitution and Section 275, to commence no later~~
6 ~~than July 1, 2009, and to conclude within two years.~~

7 ~~(b) In all other respects, implement the strategic workplan in~~
8 ~~accordance with the timetable referenced in its timeline of~~
9 ~~activities.~~

10 ~~(c) Ensure that its implementation of the strategic workplan is~~
11 ~~consistent with its duties to protect the public trust, and to prevent~~
12 ~~the waste, unreasonable use, unreasonable method of use, or~~
13 ~~unreasonable method of diversion of water in California.~~

14 ~~(d) Ensure that its implementation of the strategic workplan~~
15 ~~fully considers all of the following:~~

16 ~~(1) The instream flow and other biological requirements~~
17 ~~necessary to ensure the long-term health of fish and wildlife~~
18 ~~resources served by the Sacramento-San Joaquin Delta.~~

19 ~~(2) The anticipated effects of climate change on the water~~
20 ~~resources of the two water projects, and the condition of the~~
21 ~~Sacramento-San Joaquin Delta.~~

22 ~~(3) The effect of drought conditions upon the ability of the~~
23 ~~Sacramento-San Joaquin Delta to serve beneficial uses.~~

24 ~~12228.8. The state board shall prepare quarterly reports which~~
25 ~~shall be available to the public and posted on its Internet Web site,~~
26 ~~describing its implementation of the strategic workplan. These~~
27 ~~reports shall disclose whether the state board anticipates any~~
28 ~~revisions in the schedules referenced in Section 12228.4, and~~
29 ~~demonstrate good cause for any further delays in the schedule.~~

30 ~~SEC. 3. This act is an urgency statute necessary for the~~
31 ~~immediate preservation of the public peace, health, or safety within~~
32 ~~the meaning of Article IV of the Constitution and shall go into~~
33 ~~immediate effect. The facts constituting the necessity are:~~

34 ~~In order to facilitate the implementation of the Strategic~~
35 ~~Workplan for Actions to Protect Beneficial Uses of the San~~
36 ~~Francisco/Sacramento-San Joaquin Delta Estuary by the State~~
37 ~~Water Resources Control Board, as soon as possible, it is necessary~~
38 ~~for this act to take effect immediately.~~

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